



MASTER CONTRACT

No. 02619

BULK FRESH FRUITS AND VEGETABLES WEST REGION

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

CHARLIE'S PRODUCE

Dated February 1, 2020

MASTER CONTRACT

No. 02619

BULK FRESH FRUITS AND VEGETABLES WEST REGION

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 Triple "B" Corporation, a Washington corporation dba Charlie's Produce, a ("Contractor") and is dated and effective as of February 01, 2020.

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). Each Enterprise Services' master contract is a contract for specific goods and/or services that is competitively solicited and established by Enterprise Services, on behalf of the State of Washington, for use by statutorily specified 'eligible purchasers.' Typically, eligible purchasers use such master contracts through a purchase order, work order, or similar document. The master contract is designed to function as a 'procurement bridge' between innovative vendors who have bid and won a competitive solicitation to supply goods/services and eligible purchasers who wish to purchase such goods/services pursuant to pre-determined, clear, consistent, easy to use, value-added master contracts.
- B. The State of Washington, through various state agencies (e.g., Department of Corrections, Department of Social and Health Services, Department of Veterans Affairs, Washington State School for the Blind) is entrusted with the care of individuals, including the provision of meals. These state agencies purchases goods and services to perform their mission. This Master Contract is designed to provide a competitively solicited and awarded procurement solution for such agencies and other eligible purchasers, including, for example, school districts, to efficiently and cost-effectively purchase bulk fresh fruits and vegetables.
- C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 02619 dated October 15, 2019 regarding Bulk Fresh Fruits and Vegetables. The Competitive Solicitation was structured to meet purchaser needs and designed to result in an award of a Master Contract, by geographic area, in which the State of Washington was divided into the East Region and the West Region.
- D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as the apparent successful bidder for the West Region.
- E. Enterprise Services has determined that entering into this Master Contract for the West Region will meet the identified needs and be in the best interest of the State of Washington.
- F. 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 sixty (60) months, commencing on February 01, 2020 and ending on January 31, 2025.
2. **ELIGIBLE PURCHASERS.** This Master Contract may be utilized by any of the following types of entities ("Purchaser"):
 - 2.1. **WASHINGTON STATE AGENCIES.** All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - 2.2. **WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES).** Any the following institutions of higher education in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University;
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
 - 2.3. **MCUA PARTIES.** 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) in the State of Washington;
 - 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 and deliver only those goods and/or services set forth in *Exhibit A – Bulk Fresh Fruits and Vegetables* 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 and deliver any goods and/or services beyond those set forth in *Exhibit A – Bulk Fresh Fruits and Vegetables*.
 - 3.2. **GEOGRAPHIC REGION.** This Master Contract is for the West Region and applies to Master Contract orders delivered to any location within the following counties:

- Clallam
- Clark
- Cowlitz
- Grays Harbor
- Island
- Jefferson
- King
- Klickitat
- Lewis
- Mason
- Pacific
- Pierce
- San Juan
- Skagit
- Skamania
- Snohomish
- Thurston
- Wahkiakum
- Whatcom

3.3. 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.

3.4. ECONOMIC ADJUSTMENT. Beginning twelve (12) months after the effective date of this Master Contract and for every annual anniversary thereafter, the prices of the "Fixed Fee" set forth in *Exhibit B* shall be evaluated, based upon the percent changes (whether up or down) in the United States Department of Labor, Bureau of Labor and Statistics (BLS) indices described below, for the most recent year. The "Fixed Fee" prices set forth in *Exhibit B* shall be adjusted, based upon the percent changes (whether up or down) in the United States Department of Labor, Bureau of Labor and Statistics (BLS) indices for "Delivery and Warehouse Industries, not seasonally adjusted" (PCUADLVWRADLVWR). Economic adjustment will lag one (1) calendar quarter past the Contract commencement date to allow for publication of BLS data. All calculations for the index shall be based upon the latest version of data published as of November each year. Prices shall be adjusted in February. If an index is recoded, that is the replacement is a direct substitute according to the BLS, this Contract will instead use the recode. If an index becomes unavailable, Enterprise Services shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available will be used. The economic adjustment shall be calculated as follows:

$$\text{Adjustment \%} = (\text{Average 12 months of the most current index data} - \text{Average 12 months index data prior to contract start date}) / \text{Average 12 months index data prior to contract start date}$$

3.5. PRICE CEILING. Although the Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Goods at no greater than the prices set forth in *Exhibit B – Prices for Bulk Fresh Fruits and Vegetables* (subject to economic adjustment as set forth herein). Contractor is permitted, weekly, to update "Bidder Cost FOB (landed)" as indicated in in *Exhibit B – Prices for Bulk Fresh Fruits and Vegetables* as applicable. Price updates shall be based upon the United States Department of Agriculture (USDA) Market News Specialty Crops Report(<https://www.marketnews.usda.gov/mnp/fv-report-top-filters?startIndex=1&dr=1&rowDisplayMax=25&type=termPrice&repType=termPriceDaily&navType=termNav&termNav=1&dr=1&locAbr=SX&locName=San%20Francisco&termNavClass=AFV>) for the San Francisco Terminal market, All Fruits & Vegetables report. All price updates shall be

accurately reflected in real time on the Online Pricing Website or Online Ordering System. If a report becomes unavailable, Enterprise Services shall substitute a proxy report.

- 3.6. **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 is registered with the Washington State Department of Revenue and the Washington Secretary of State, 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 FRUITS AND VEGETABLES.** Contractor represents and warrants that any fruits and vegetables sold on this Master Contract shall be merchantable, shall conform to this Master Contract and Purchaser's Purchase Order and shall be fit and safe for human consumption. Standards shall align with USDA's Index of Official Visual Aids for freshness and consumption. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances. Upon breach of warranty, Contractor will replace (at no charge to Purchaser) any fruits and vegetables whose nonconformance is discovered and made known to the Contractor. If, in Purchaser's judgment, replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 4.4. **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.5. **PAY EQUALITY.** Contractor represents and warrants that, among its workers, 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 this Master Contract.

- 4.6. EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, as previously certified in Contractor’s bidder certification that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.7. PROMPT PAYMENT DISCOUNT. Contractor represents and warrants, as previously certified in Contractor’s bidder certification that Contractor shall provide ‘prompt payment discount’ in the amount of 1% off of all purchases if payment is provided within ten (10) days.
- 4.8. REQUIRED LICENSES/CERTIFICATION. Contractor represents and warrants, as previously certified in Contractor’s bidder certification, that it possess a valid Perishable Agricultural Commodities Act (PACA) license and meets or exceeds the applicable license requirements set forth in applicable federal and state law.
- 4.9. WASHINGTON GROWN BULK FRESH FRUITS AND VEGETABLES. Contractor represents and warrants, as previously certified in Contractor’s bidder certification, that it will use commercially reasonable efforts to: (a) meet the demand from Eligible Purchasers for Washington grown bulk fresh fruits and vegetables; (b) be able to identify Washington grown bulk fresh fruits and vegetables in the catalog; and (c) continually work to offer Washington grown bulk fresh fruits and vegetables at a competitive price. Such Washington grown bulk fresh fruits and vegetables, if available, shall be designated as ‘Washington Grown.’ With the exception of the ‘landed cost,’ such Washington Grown bulk fresh fruits and vegetables shall be priced as set forth in this Master Contract. Contractor, to the greatest extent possible, shall provide a ‘landed cost’ for such Washington Grown bulk fresh fruits and vegetables that is consistent with this Master Contract.
- 4.10. 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.
- 4.11. FEDERAL LOBBYING – BYRD ANTI-LOBBYING AMENDMENT. Contractor represents and warrants, as previously certified in Contractor’s bidder certification, that Contractor complies with the federal Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.].

- 4.12. **BUY AMERICAN.** Contractor represents and warrants, as previously certified in Contractor's bidder certification, that, upon request by Eligible Purchasers, Contractor shall offer as part of its product catalog for bulk fresh fruits and vegetables, bulk fresh fruits and vegetables that satisfy the federal 'Buy American' requirement. Accordingly, Contractor shall provide for purchase and certify that such bulk fresh fruits and vegetables are processed in the U.S. and contain over 51% of its agricultural food component, by weight or volume, from the U.S. in accordance with section 12(n) of the National School Lunch Act and the implementing regulations. *See* 42 USC § 1760(n); and 7 CFR § 210.21(d).
 - 4.13. **DELIVERIES TO SCHOOLS – CONTRACTOR EMPLOYEES.** Contractor represents and warrants, as previously certified in Contractor's bidder certification, that, for any deliveries to schools, no such deliveries shall be performed by any Contractor personnel whose Contractor, upon reasonable inquiry and investigation, has reason to know has pled guilty to or been convicted of any felony crime specified under RCW 28A.400.322 (crimes against children).
 - 4.14. **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.
 - 4.15. **STATEWIDE PAYEE DESK.** Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
 - 4.16. **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.
 - 4.17. **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 bulk fresh fruits and vegetables 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, include 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. The terms of this Master Contract shall apply to any Purchase Order, and in the event of any conflict, the terms of this Master Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall

any 'click-agreement,' software, or web-based application terms and conditions, or other agreement modify the terms and conditions of this Master Contract.

- 5.2. CONTRACTOR'S ORDERING PORTALS. Contractor, at a minimum, shall provide, at no additional cost or expense to Eligible Purchasers, the following ordering portals to order bulk fresh fruits and vegetables from this Master Contract:
- (a) EMAIL: Contractor shall provide an email address for orders and must respond within 24 hours of orders placed by email.
 - (b) PHONE: Contractor shall provide a toll free telephone number for orders that is available, between the hours of 6AM to 6PM Pacific Time Monday thru Friday.
 - (c) ONLINE PRICING WEBSITE: Contractor shall maintain and provide an online website and, if available, mobile application (collectively 'website') displaying current pricing for bulk fresh fruits and vegetables available through this Master Contract. Such website shall be specific to this Master Contract and limited to bulk fresh fruits and vegetables, and the pricing for such that is required pursuant to this Master Contract. When applicable, such website also shall identify Washington grown bulk fresh fruits and vegetables. Contractor's website design must provide for efficient use by Eligible Purchasers. In addition, Contractor's website also must provide an archive of all pricing during the term of this Master Contract.
- 5.3. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of bulk fresh fruits and vegetables 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(s) 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.
 - (b) Contractor shall ship and deliver all bulk fresh fruits and vegetables purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Purchaser's specified destination(s) with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the items ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's negligence.
 - (c) All items will be delivered free of damage, with all packaging and packing intact. All deliveries must be palletized, labeled with name of receiving location, and wrapped in clear wrap. Refrigerated items, and non-refrigerated items are to be palletized separately. Pallets will not exceed 5 feet in height. Contractor's delivery person(s) will be responsible for unloading. Any items that are delivered short, damaged, or in error from the order will be Contractor's responsibility and, unless otherwise agreed, shall be replaced within 24 hours. Contractor shall remove all excess pallets used for delivery from the delivery point. The invoice must list all items delivered.
 - (d) Delivery trucks will maintain items at the appropriate temperature during transportation and delivery, as required by industry standards.

- (e) Delivery frequencies will vary by Eligible Purchaser. Contractor shall work with Eligible Purchasers to establish mutually agreeable delivery schedules.
- (f) All items must meet or exceed minimum standards or Contractor will replace the item(s) within twenty-four (24) hours or provide a credit, whichever the Purchaser prefers.

5.4. RECEIPT AND INSPECTION. All deliveries are subject to inspection at destination. Non-conforming items may be rejected at Contractor's expense. Late deliveries or deliveries that cannot be made within the above guidelines may be canceled at no cost to the Purchaser. The authorized receiving official at each delivery point is responsible for inspecting and accepting deliveries. The invoice/delivery ticket shall not be signed prior to the inspection of the delivery, unless agreed to in writing by the authorized receiving official (Purchaser). The receiving official shall document and sign the delivery ticket /invoice as the shipment is being made but before the delivery truck leaves the Purchaser. All overages/shortages/returns are to be noted on the delivery ticket by receiving official and truck driver. A signature on the delivery ticket/invoice denotes acceptance of the Item. Contractor shall attach three (3) copies of the delivery ticket/invoice to the shipment. The receiving official will use the ticket/invoice as the receipt document. Two (2) copies of the signed and annotated delivery ticket/invoice will serve as the acceptance document. No invoice may be submitted for payment until acceptance is verified.

5.5. QUALITY CONTROL PROGRAM. Contractor shall guarantee the freshness and quality of its delivered bulk fresh fruits and vegetables. Items deemed unacceptable by Purchaser shall be rejected as cited in Exhibit A by USDA standards. Reasons for rejection include, but are not limited to:

- Items shipped due to Contractor error
- Item damaged in shipment
- Concealed or latent damage
- Item does not meet shelf life requirements
- Item does not meet minimum quality requirements
- Item delivered in unsanitary delivery vehicle
- Item not transported in temperature controlled delivery vehicles
- Item is recalled

5.6. REJECTION PROCEDURES. If any item is determined to be defective, damaged, or compromised in any other manner, it may be rejected by the Purchaser.

- (a) When any item is found to be nonconforming or damaged, Purchaser will determine the course of action to be taken with the item in question. The final decision rests with the Purchaser. For unauthorized substitutions, Purchaser will determine whether to reject or accept such items. If accepted, Purchaser reserves the right to pay Contractor only that amount allotted for the original item ordered. Items transported in vehicles which are not sanitary or which are not equipped to maintain industry standard temperatures, may be rejected without further inspection.

- (b) In the event an item is rejected, the delivery ticket/invoice shall be annotated as to the item(s) rejected. These items shall then be deducted from the delivery ticket/invoice. The invoice total must be adjusted to reflect the correct dollar value of the shipment. Replacements will be authorized based on Purchaser needs. To the greatest extent possible, on an as-needed emergency basis, same day re-delivery of items that were previously rejected shall be made, so that food service requirements do not go unfulfilled for that day. The re-delivered items will be re-delivered under a separate invoice, utilizing the same purchase order number for the discrepant line. These re-deliveries will not constitute an emergency or supplemental requirement, and therefore, will have no additional charges.
 - (c) In the event that an item is rejected after initial delivery has been made, Contractor will pick up the rejected item. Pick up is to be within forty eight (48) hours or less for perishable and within five (5) business days or less for non-perishable items. Pick up may be extended if both parties agree in writing. If Contractor fails to pick up the rejected items within time frames specified, Purchaser reserves the right to consider them property of the state and dispose of them as seen fit, with no payment to Contractor. Credit due to Purchaser as a result of the rejected item being returned, will be handled through a receipts adjustment process in the ordering system. If Contractor has already been paid for the item, a credit will be issued to Purchaser. Contractor shall issue a refund within ten (10) business days.
 - (d) If a Purchaser requires a one-to-one replacement, no additional paper work is necessary. The Contractor delivery ticket/invoice will show that such item is a replacement for a rejected item. The invoice shall reference the Purchase Order Number of the originally ordered item. In addition, a copy of the credit memo from any returned item is to be attached to the invoice.
- 5.7. CONTRACTOR QUALITY SYSTEM AND MANAGEMENT VISITS. Enterprise Services and/or its designated representative may conduct Contractor quality and management visits to review Contractor's methods to verify compliance with the terms of this Master Contract. Such visits also will ensure that the quality level of the bulk fresh fruits and vegetables meet contract requirements. Such visits may include on-site visits to subcontractors and/or Contractor's suppliers. Contractor shall make all arrangements for visits by Enterprise Services' designated personnel to Contractor, subcontractors, and suppliers. Enterprise Services shall provide a visit agenda and schedule at least two (2) business days prior to any visit. Enterprise Services will forward a report detailing any issues requiring corrective action or other adjustments.
- 5.8. SANITARY APPROVED SOURCE REQUIREMENTS. All bulk fresh fruits and vegetables sold and delivered, shall originate either from an establishment which has been inspected under the guidance of the United States Department of Commerce or the United States Department of Agriculture.
- 5.9. WAREHOUSING AND SANITATION PROGRAM. Contractor shall develop and maintain a sanitation program to comply, with the Code of Federal Regulation, Title 21 Part 110 and other applicable federal, state, or local standards. Records of inspections performed by the Contractor, subcontractor, or recognized industry association shall be maintained and made available at Enterprise Services' request. Any findings by the Contractor or its agent

documenting a critical sanitation deficiency shall be reported immediately to Enterprise Services with an attached report of corrective action.

- 5.10. STORED PRODUCTS PEST MANAGEMENT PROGRAM. Contractor shall develop and maintain a stored products pest management program for all bulk fresh fruits and vegetables sold pursuant to this Master Contract. 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.
- 5.11. ITEM AVAILABILITY. Contractor distribution centers must be sufficiently stocked to meet anticipated Purchaser requirements insofar as such items available in markets. NOTE: If movement of 20 cases or more of an item per month is anticipated (combination of all state facilities), Contractor must stock that item within thirty days of notification.
- 5.12. FILL RATE CALCULATIONS AND PENALTIES. Contractor shall maintain a 97% fill rate per month with a goal of 100% per month. Monthly order fill rates shall be calculated on an on-time, per order basis and tracked for quarterly submission or as requested to the Enterprise Services.

The fill rate shall be calculated as follows; for example:

$$\text{Cases Accepted as on Time} / \text{Total Cases Ordered} = \text{fill rate \%}$$

In order to correctly calculate fill rates, all items ordered shall be shown on the shipping invoice/packing slip. Backordered or discontinued items shall be clearly annotated. Price and specification must match purchase order details. The fill rate shall be calculated with and without substitutions (missed pickups shall not be excluded from the overall fill rate calculation). Calculations shall be made by the Purchaser recipient and sent to the Contractor for notification. Results can be sent to the Contract Specialist at Enterprise Services who manages this contract if enforcement is needed. Substitutions must be approved by authorized Purchaser personnel in writing prior to shipment. Sufficient advance notification, (48 hours prior to shipping) must be provided of substitutions to give Purchaser adequate opportunity to change menus if required. Should the monthly fill rate for Purchasers that were not accepted during the month that fall within the fulfillment percentages listed below, a credit shall be given to the Purchaser against future orders.

FILL RATE %	PENALTY % OF FIXED FEE
97% to 95%	5%
94% to 90%	10%
89% or less	25%

- 5.13. PRODUCT SUBSTITUTION/MATCH. Substitutions must be of a like item and of equal or greater value that both parties agree upon, and that meet or exceeding the outlined specifications and charged to the Purchaser at the contracted price. The substitution item must also be of comparable size, quantity, quality, case count or content, and nutritive value. If the item does not conform, it will be considered a substitution against the monthly fill rate. All items not provided as ordered, or without a substitution, will count against the monthly fill rate and must be reported in writing on a monthly basis to the affected purchaser.

- 5.14. PACKAGING AND LABELING. All packaging and packing 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 purchasers receiving National School Lunch Program reimbursement). Shipping containers shall be in compliance with the National Motor Freight Classification and Uniform Freight Classification Code.
- (a) Semi-perishable items shall be snugly packed in shipping containers that fully comply with the National Motor Freight Classification and Uniform Freight Classification Code, as applicable.
 - (b) 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.
 - (c) To ensure that the carrier and the receiving activity properly handle and store items, standard commercial precautionary markings, such as "KEEP REFRIGERATED", etc. shall be used on all cases when appropriate.
 - (d) To the maximum extent possible or when requested by Purchaser, nutritional and ingredient labels shall be placed on the product packaging.
- 5.15. RETURNS. The contractor shall accept returns, with no charge, under the following conditions:
- a) Items or excess product shipped due to Contractor error.
 - b) Items damaged in shipment.
 - c) Items with concealed or latent damage.
 - d) Items that are recalled.
 - e) Items that do not meet shelf life requirements.
 - f) Items that expire within 3 days of delivery.
 - g) Items that do not meet quality requirements.
 - h) Items delivered in unsanitary delivery vehicles.
 - i) Items not transported in temperature controlled delivery vehicles.
 - j) Quantity excess as a result of order input error.
- 5.16. HOLIDAYS. All orders are to be delivered on the specified delivery date, except for state holiday (unless otherwise requested by Purchaser) as outlined below.
- a) When a scheduled delivery day falls on one of these days, or one designated by your firm, delivery should occur on the next business day, unless otherwise agreed to by the Purchaser in advance. Deliveries for emergency responses, however, will need to be made as directed notwithstanding holidays or weekends.
 - b) State of Washington Holidays: New Year's Day, Dr. Martin Luther King Jr's Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after, and Christmas Day. Note: Saturday holidays are

celebrated on the proceeding Friday; Sunday holidays are celebrated on the following Monday.

5.17. 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, safety, and other security requirements. Without limiting the generality of the preceding sentence, the following requirements are provided to help inform Contractor's obligations regarding specific Purchasers which Contractor and Purchaser should address in site-specific delivery instructions and requirements:

- (a) Department of Corrections. Washington State law prohibits a person from bringing any contraband, such as but not limited to narcotic substances, weapons or intoxicating liquor onto the premises of any Department of Corrections (DOC), or Department of Social and Health Services (DSHS) Juvenile Facilities, Correctional Institution or Mental Health Division facility. (Reference WAC 275-80-805, WAC 275-80-900, RCW 72.05.130).
- (b) Department of Social and Health Services. DSHS institutions for the developmentally disabled are not considered "secure" in the above context. It is the intent of the State of Washington to protect the interests and welfare of all institutionalized residents entrusted to its care.
- (c) Security Clearances. Contractor is required be informed and to arrange for personnel to deliver to Purchasers who have special security, background check, or other delivery personnel requirements. Contractor also is responsible to have sufficient personnel to rotate drivers for deliveries at secured institutions. Contractor representatives and drivers must produce satisfactory personal identification upon request at the institution. The identification presented must match the pre-approved identification that will be provided by the Contractor to the Purchaser.
- (d) Any unauthorized introduction of any contraband onto the premises of any Washington State institution by Contractor, or a contractor employee may result in the immediate cancellation of this Master Contract.

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. 02619
- (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:

Enterprise Services

Attn: Sean Hoffert
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-8016
Email:
DESContractsTeamMaples@des.wa.gov

Contractor

Attn: Triple B Corporation
dba Charlie's Produce
4103 2nd Ave South
Seattle, WA 98134
Tel: (206) 577-9821
Email: Cherieb@charliesproduce.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: Triple B Corporation 4103 2nd Ave South Seattle, WA 98134 Tel: (206) 577-9821 Email: Cherieb@charliesproduce.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

8.2. **VENDOR MANAGEMENT FEE.** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.5 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

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

Amount owed to Enterprise Services = Total Master Contract sales invoiced (not including sales tax) x .015.

- (b) The VMF must 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 suspension or 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: item description, item number or other identifiers, per unit quantities sold, and Master Contract price. This report must be provided in an electronic format that can be read by MS Excel.

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*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.
- 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 and agents in connection with its 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 managers 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 vendor 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 Public Convenience.** Enterprise Services, for public convenience, may terminate this Master Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public 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 public 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.
- 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. 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.
- 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 fruits and vegetables 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. This competitive procurement is has not placed

unreasonable requirements on firms to qualify for business as set forth in 2 CFR Part 200.319(a)(1)/7 CFR 3016.36(c)(1)(i). Competitive procurement cost and price analysis have been conducted in accordance with 2 CFR Part 200.323. This competitive procurement has not restricted completion as described in 2 CFR Part 200.319.

- 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 exclusive 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

TRIPLE "B" CORPORATION,
A WASHINGTON CORPORATION
DBA CHARLIE'S PRODUCE

By: 
Chad Irwin
Its: Procurement Supervisor

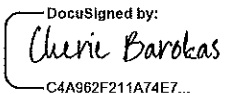
By: 
Cherie Barokas
Its: National Accounts Sales Manager

EXHIBIT A

BULK FRESH FRUITS AND VEGETABLES

The following is a list of fruits and vegetables that may be selected during the life of the contract. The State acknowledges that these items will be based on seasonal availability. This list shall adhere to the USDA's Index of Official Visual Aids of most recent publication.

ALFALFA SPROUTS	CARAMBOLA - STAR FRUIT	FIGS	LETTUCE, RED LEAF	PEAS GREEN	TAMARILLO
ALOE LEAVES	CARROTS	FRISEE	LETTUCE, ROMAINE	PEAS OTHER	TAMARINDO
APPLE PEARS	CAULIFLOWER	GALIA MELON	LIMES	PEPINO	TANGELOS
APPLES	CELERY	GARLIC	LO BOK	PEPPERS, BELL TYPE	TANGERINES
ARTICHOKES	CHAYOTE	GINGER ROOT	LONG BEANS	PEPPERS, OTHER	TARO
ASPARAGUS	CHERIMOYA	GRAPEFRUIT	LYCHEE	PERSIMMONS	TOMATILLOS
AVOCADOS	CHERRIES	GRAPES	MAMEY SAPOTE	PINEAPPLES	TOMATOES
BANANAS	CHINESE CABBAGE	GREENS	MANGOES	PLUMS	TOMATOES, CHERRY
BEAN SPROUTS	CHINESE CELERY	GUAVA	MESCULIN MIX	PUMMELO	TOMATOES, GRAPE TYPE
BEANS	CHINESE CHIVES	HONEYDEWS	MEYER LEMON	QUINCE	TOMATOES, PLUM TYPE
BEETS	CITRON	JACKFRUIT	MUSHROOMS	RADICCHIO	TUMERIC
BITTERMELON	CLEMENTINES	JERUSALEM ARTICHOKES	MUSTARD	RADISHES	TURNIPS
BLACKBERRIES	COCONUTS	JICAMA	NECTARINES	RAMBUTAN	WATER CHESTNUTS

BLOOD ORANGE	COLLARD GREENS	KALE GREENS	OKRA	RASPBERRIES	WATERMELONS
BLUEBERRIES	CORN-SWEET	KIWANO	ONIONS GREEN	RED CURRANTS	YUCA (CASSAVA)
BOK CHOY	CUCUMBERS	KIWIFRUIT	OPO (LONG SQUASH)	RUTABAGAS	
BROCCOLI	DAIKON	KUMQUATS	ORANGES	SINQUA (ANGLED/RIDGED LUFFA)	
BROCCOLI RABE (RAPPINI)	DANDELION GREENS	LEMONS	ORO BLANCO	SOUR ORANGE CITRUS	
BRUSSELS SPROUTS	DATES	LETTUCE, BOSTON	PAPAYA	SPINACH	
CABBAGE	DRAGON FRUIT (RED PITAYA)	LETTUCE, GREEN LEAF	PARSLEY	SQUASH	
CACTUS LEAF (NOPALES)	EGGPLANT	LETTUCE, ICEBERG	PARSNIPS	STRAWBERRIES	
CACTUS PEARS	ENDIVE	LETTUCE, LOLLA ROSSA	PASSION FRUIT	SWEET LIME	
CANTALOUPS	ESCAROLE	LETTUCE, OAK LEAF - GREEN	PEACHES	SWEET POTATOES	
CAPE GOOSEBERRIES (PHYSALIS)	FEIJOA	LETTUCE, OAK LEAF - RED	PEARS	SWISS CHARD	

Exhibit B

PRICES FOR BULK FRESH FRUITS AND VEGETABLES

Pricing will be made available to the purchaser of this contract once an account is established with the vendor. The following is a list of **Fixed Fee** for the items on this contract. The landed cost must be consistent to the USDA Market report for the San Francisco location for the Terminal Market. Example: USDA (Landed) + Fixed Fee = Unit Price. This will fluctuate weekly.

Item No.	Pack	Size	Variety/Description	Bidder Item No.	Bidder's Pak/Size	Fixed Fee
1	1	88CT	APPLE,FUJI USXF	011-01122	1/88CT	\$ 1.90
2	1	72/88CT	APPLE,FUJI WAXF PREMIUM	011-01926	1/72/88CT	\$ 1.90
3	1	163CT	APPLE,GALA	011-01115	1/163CT	\$ 1.90
4	1	100CT	APPLE,GALA USXF	011-02614	1/100CT	\$ 1.90
5	1	113CT	APPLE,RED DEL WAXF	011-01360	1/113CT	\$ 1.90
6	1	11LB	ASPARAGUS,STD BUNCHED	016-01074	1/11LB	\$ 1.90
7	1	24CT	AVOCADO,HASS RIPE	013-01012	1/24CT	\$ 1.90
8	1	40LB	BANANA,CODE 3-3.5 LIGHTGREEN	013-00581	1/40LB	\$ 1.90
9	1	40LB	BANANA,CODE 4-5 GRTIP/RIPE	013-00582	1/40LB	\$ 1.90
10	1	40LB	BANANA,SINGLE 150/CODE 4.5 GRTIP RI	013-00534	1/40LB	\$ 1.90
11	1	10LB	BANANA,SINGLE FOODSERVICE RIPE	031-00580	1/10LB	\$ 1.90
12	150	EACH	BANANAS PETITE (SINGLES)	013-00534	1/40LB	\$ 1.90
13	40	LB	BANANAS PREMIUM 3/4	013-00582	1/40LB	\$ 1.90
14	2	5LB	BEAN,GREEN TRIMMED	028-00205	2/5LB	\$ 1.90

15	12	6OZ	BLACKBERRY,CLAMSHELL	014-01637	12/6OZ	\$ 1.90
16	12	6OZ	BLUEBERRY,CLAMSHELL	014-01501	12/6OZ	\$ 1.90
17	4	3LB	BROCCOLI,FLORETTE	028-00408	4/3LB	\$ 1.90
18	1	18CT	BROCCOLINI,ASPIRATION BUNCHED	016-03182	1/18CT	\$ 1.90
19	1	45LB	CABBAGE,GREEN	016-01185	1/45LB	\$ 1.90
20	6	5LB	CARROT,BABY PEELED 6/5#BOLTHOUSE	016-01305	6/5LB	\$ 1.90
21	1	5LB	CARROT,BABY PEELED W/TOP	017-01038	1/5LB	\$ 1.90
22	1	50LB	CARROT,CLIPTOP	016-01276	1/50LB	\$ 1.90
23	1	25LB	CARROT,JUMBO	016-01285	1/25LB	\$ 1.90
24	1	12CT	CAULIFLOWER,CELLO	016-01686	1/12CT	\$ 1.90
25	4	3LB	CAULIFLOWER,FLORETTE	028-00417	4/3LB	\$ 1.90
26	45	LB	CELERY NAKED **30'S**	016-01403	1/30CT	\$ 1.90
27	1	30CT	CELERY,#1	016-01403	1/30CT	\$ 1.90
28	4	5LB	COLESLAW, W/COLOR	028-00587	4/5LB	\$ 1.90
29	1	12CT	CUCUMBER,ENGLISH #1 HOTHSE	016-01630	1/12CT	\$ 1.90
30	1	36CT	CUCUMBER,XFCY	016-01530	1/36CT	\$ 1.90
31	1	18LB	GRAPE,GREEN SDLS M/L	014-01331	1/19LB	\$ 1.90
32	1	19LB	GRAPE,GREEN SEEDLESS M/L	014-01331	1/19LB	\$ 1.90
33	1	20LB	GRAPE,RED (LUNCH BUNCH)	014-01848	1/20LB	\$ 1.90
34	1	18LB	GRAPE,RED SEEDLESS M/L	014-01831	1/19LB	\$ 1.90
35	1	135CT	KIWI	013-01431	1/135CT	\$ 1.90
36	24	EACH	LETTUCE ROMAINE	903-01510	1/24CT	\$ 1.90
37	1	24CT	LETTUCE,GREEN LEAF	903-01520	1/24CT	\$ 1.90

38	1	1CT	LETTUCE,ICEBERG(CELLO)	031-01462	1/1CT	\$ 1.15
39	1	24CT	LETTUCE,ROMAINE	903-01510	1/24CT	\$ 1.90
40	1	48CT	LETTUCE,ROMAINE HEARTS PREMIUM	016-01928	1/48CT	\$ 1.90
41	4	5LB	LETTUCE, SHREDDED	028-01378	4/5LB	\$ 1.90
42	10	3LB	MANDARIN,CLEMENTINE (HALOS 36SZ)	012-02025	10/3LB	\$ 1.90
43	1	9/10CT	MANGO,RIPE	013-01342	1/10CT	\$ 1.90
44	1	9CT	MELON,CANTALOUPE	015-01903	1/9CT	\$ 1.90
45	1	5/6CT	MELON,HONEYDEW	015-02063	1/5/6CT	\$ 1.90
46	1	10LB	MUSHROOM,SLICED THICK B	016-02126	10 LB	\$ 1.90
47	1	25LB	NECTARINES	014-01101	18 LB	\$ 1.90
48	4	12CT	ONION,GREEN ICELESS BAGGED	016-02700	4/12CT	\$ 1.90
49	1	25LB	ONION,RED JUMBO	023-01205	1/25LB	\$ 1.90
50	1	50LB	ONION,YELLOW JUMBO	023-01008	1/50LB	\$ 1.90
51	1	50LB	ONION,YELLOW MEDIUM	023-01075	1/50LB	\$ 1.90
52	50	LB	ONIONS JUMBO YELLOW #1	023-01008	1/50LB	\$ 1.90
53	25	LB	ONIONS RED JUMBO	023-01205	1/25LB	\$ 1.90
54	1	113CT	ORANGES, NAVEL	012-01700	1/113CT	\$ 1.90
55	38	LB	ORANGES VALENCIA CH 113	012-01700	1/113CT	\$ 1.90
56	1	25LB	PEACHES	014-01171	18 LB	\$ 1.90
57	1	70/80CT	PEAR,BARTLETT FCY	011-03070	70/80CT	\$ 1.90
58	1	25LB	PEPPER,GREEN LARGE	016-02178	1/25LB	\$ 1.90
59	1	1LB	PEPPER,JALAPENO BAGGED	031-01641	1/1LB	\$ 1.15
60	25	LB	PEPPERS GRN BELL CHOICE	016-02179	65/75CT	\$ 1.90

61	1	25lb	PEPPERS, RED	016-02242	1/25LB	\$ 1.90
62	1	7/8CT	PINEAPPLE, 1 LAYER	013-01510	1/7/8CT	\$ 1.90
63	1	28LB	PLUMS	014-01220	1/28LB	\$ 1.90
64	1	100CT	POTATO, RUSSET BAKER 100CT	024-01141	1/100CT	\$ 1.90
65	1	50LB	POTATO,RUSSET #2	024-01167	1/50LB	\$ 1.90
66	12	6OZ	RASPBERRY,CLAMSHELL	014-01665	12/6OZ	\$ 1.90
67	50	LB	RUSSET BAKER 90 CT USA	024-01248	1/90CT	\$ 1.90
68	1	4LB	SPINACH,BABY LOOSE BULK	017-01133	1/4LB	\$ 1.90
69	1	22LB	SQUASH,ZUCCHINI MEDIUM	016-02518	1/22LB	\$ 1.90
70	8	1LB	STRAWBERRY,CLAMSHELL	014-01620	8/1LB	\$ 1.90
71	1	50lb	SWEET POTATOES	024-01605	1/40LB	\$ 1.90
72	6	2 LB	TFS ROMAINE CHOPPED	028-01272	6/2LB	\$ 1.90
73	1	20LB	TOMATO, 4X5	022-01061	1/20LB	\$ 1.90
74	1	20LB	TOMATO, 5X6	022-01063	1/20LB	\$ 1.90
75	1	20LB	TOMATO, 6X6	022-01157	1/20LB	\$ 1.90
76	1	5LB	TOMATO,DICED	028-00893	1/5LB	\$ 1.90
77	1	11LB	TOMATO,RED ON THE VINE	022-01059	1/11LB	\$ 1.90
78	1	25LB	TOMATO,ROMA VALUE	022-01616	1/25LB	\$ 1.90
79	1	5LB	TOMATO,SLICED	027-01211	1/5LB	\$ 1.90
80	4	5LB	TOSSED SALAD, REG W/COLOR	028-01388	4/5LB	\$ 1.90
81	1	LB	WATERMELONS SEEDLESS	015-02275	LB	\$ 0.05
82	1	BIN	WATERMELLON SEEDLESS	015-02267	1/60CT	\$ 30.00

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Master Contract, with limits of not less than \$2,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.
 - c. **EMPLOYERS LIABILITY (STOP GAP) INSURANCE.** Employers liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Except for Workers Compensation, Professional Liability, Personal Automobile Liability, and Pollution Liability Insurance, all required insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Master Contract, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. All policies and certificates of insurance shall include the Master Contract number stated on the cover of this Master Contract.
5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Contract number stated on the cover of this Master Contract.