

State of Washington
Contracts & Procurement Division
Department of Enterprise Services
P.O. Box 41411
Olympia, WA 98504-1411

Toyota Lift Northwest
19305 72nd Ave South
Kent, WA 98032

**SECOND AMENDMENT
TO
CONTRACT NO. 06115
FORKLIFTS**

This Second Amendment ("Amendment") to Contract No. 06115 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 ("State") and Toyota Lift Northwest, an Oregon Corporation ("Contractor") and is dated as of November 17, 2020.

RECITALS

- A. State and Contractor (collectively the "Parties") entered into that certain Contract No. 06115 for Forklifts dated effective as of November, 1, 2016 ("Contract").
- B. The Parties previously amended the Contract to adjust the applicable Vendor Management Fee (VMF) effective July, 1, 2017.
- C. The amendment set forth herein is within the scope of the Contract.
- D. The Parties now desire to amend the Contract as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract, as previously amended, as follows:

1. **PRICE CHANGES.** Price escalation/de-escalation will be based on dividing the Price Producers Index (PPI) value for month of contract award year, by the PPI value for the following annual contract anniversary date of contract award. The percent adjustment will be applied to base vehicle price and all contract options (including deducts). The correct PPI used from the Bureau of Labor and Statistics (BLS) will be PCU3339233392. All indexes are preliminary and subject to revision four months after original publication. Examples of price changes equations can be seen in section 5.6 of the solicitation. However, in no event will DES allow a PPI-based adjustment that result in a price increase of greater than five percent (5%) per year above the original price offered. From October 2016 to October 2019 the increase is 8%. This 8% increase will be applied to the 2016 prices.
2. **NO CHANGE OTHER THAN AMENDMENT.** Except as amended herein, the Contract is unaffected and remains in full force and effect.

3. INTEGRATED AGREEMENT; MODIFICATION. This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
4. AUTHORITY. Each party to this Amendment, 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 Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
5. ELECTRONIC SIGNATURES. A signed copy of this Amendment 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 Amendment or such other ancillary agreement for all purposes.
6. COUNTERPARTS. This Amendment 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 Amendment 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 Amendment.

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

**TOYOTA LIFT NORTHWEST,
AN OREGON CORPORATION**

By: *Danielle Rousseau*
Name: *Danielle Rousseau*
Title: *operations Manager*
Date: *11/9/20*

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

By: *Chad Irwin*
Name: Chad Irwin
Title: Contracts & Procurement Supervisor
Date: 11/20/2020

State of Washington
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Department of Enterprise Services
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Toyota Forklift Northwest
19305 72nd Ave South
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**THIRD AMENDMENT
TO
CONTRACT No. 06115
FORKLIFTS**

This Third Amendment ("Amendment") to Contract No. 06115 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 ("State") and Toyota Forklift Northwest ("Contractor") and is dated as of April 01, 2022.

RECITALS

- A. State and Contractor (collectively the "Parties") entered into that certain Contract No. 06115 for Forklifts dated effective as of November 01, 2016 ("Contract").
- B. The Parties previously amended the Contract as follows:
 - a. Amendment No. 1 with effective date of July 01, 2017, to adjust the applicable Vendor Management Fee (VMF); and
 - b. Amendment No.2 with effective date of November 17, 2020, to modify PPI Price Escalation/De-escalation clause of original solicitation, and to grant the Contractor 8% price increase from October 2016 to October 2019.
- C. The amendment set forth herein is within the scope of the Contract.
- D. The Parties now desire to amend the Contract as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract, as previously amended, as follows:

1. Sub-section: "PPI price escalation/de-escalation" of, section 5.6 of the original solicitation is hereby deleted in its entirety and replaced with the following:
ECONOMIC Price ADJUSTMENT. Contractor must request price adjustments within one month before or three months after annual anniversary of the contract. Upon request, prices set forth in Exhibit B – Prices 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) Producer Price Index (PPI), described below, for the most recent year. The correct PPI used from the BLS will be PPI by Industry: Material Handling Equipment Manufacturing PCU3339233392. Examples of price changes equations can be seen in sub-section: "PPI point change calculation formula", of section 5.6 of the original solicitation. However, the State shall not allow a PPI-based adjustment that results in a price increase of greater than five percent (5%) per year above previous year unless unprecedented circumstances caused by market fluctuations, and/or force majeure situations

recommend to the State to practice its discretionary power to allow price increase of greater than five percent (5%) per year above previous year.

The percent adjustment will be applied to base vehicle price and all contract options (including deducts).

If an index is recoded, that is the replacement is a direct substitute for the prior index according to the BLS, this Master Contract will use the recoded index, as applicable. 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 State shall review Economic Price Adjustment request of the Contractor and shall inform the Contractor within sixty (60) business days of their decision on the Contractor's Economic Price Adjustment request.

Price increase request shall not be evaluated for potential increase if:

- a. Contractor does not request price increase; or
- b. Contractor fails to submit its price increase request within one month before or three months after annual anniversary of the contract.

2. **PRICE INCREASE PERCENT:** Effective April 01, 2022, the price will be increased nine percent (9%) to base vehicle price and all contract options (including deducts).
3. **NO CHANGE OTHER THAN AMENDMENT.** Except as amended herein, the Contract is unaffected and remains in full force and effect.
4. **INTEGRATED AGREEMENT; MODIFICATION.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
5. **AUTHORITY.** Each party to this Amendment, 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 Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
6. **ELECTRONIC SIGNATURES.** A signed copy of this Amendment 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 Amendment or such other ancillary agreement for all purposes.
7. **COUNTERPARTS.** This Amendment 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 Amendment 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 Amendment.

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

**TOYOTA FORKLIFT NORTHWEST,
AN OREGON CORPORATION**

By: *Danielle Rousseau*
Name: *Danielle Rousseau*
Title: *Operations Manager*
Date: *3-22-2022*

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

By: *Chad Irwin*
Name: Chad Irwin
Title: Contracts & Procurement Supervisor
Date: 03/23/2022

State of Washington
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**FOURTH AMENDMENT
TO
CONTRACT No. 06115
FORKLIFTS**

This Fourth Amendment ("Amendment") to Master Contract No. 06115 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 Toyota Lift Northwest, an Oregon Corporation, ("Contractor") and is dated and effective as of October 15th, 2022.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods/services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature also has authorized Enterprise Services to make these master contracts available, pursuant to agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agencies or entities, public benefit nonprofit organizations, and any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. To provide a cost-effective and efficient procurement solution for state agencies and other eligible purchasers, Enterprise Services typically develops multi-year Master Contracts. Such Master Contracts establish pricing and, where appropriate, price adjustments over the term of the Master Contract.
- C. Enterprise Services and Contractor (collectively the "Parties") entered into that certain Master Contract No. 06115 dated effective as of November 1st, 2016 ("Master Contract").
- D. The parties previously amended this contract three (3) times as follows:
 - a. Amendment No. 1 with effective date of July 01, 2017, to adjust the applicable Vendor Management Fee (VMF);
 - b. Amendment No.2 with effective date of November 17, 2020, to modify PPI Price Escalation/De-escalation clause of original solicitation, and to grant the Contractor 8% price increase from October 2016 to October 2019; and
 - c. Amendment No. 3 with effective date of April 1st, 2022, to grant the Contractor 9% price increase.
- E. Enterprise Services and Contractor are witnessing unanticipated costs increases pertaining to certain raw materials, components, and logistical supply constraints that are unexpectedly tensioning pricing pertaining to this Master Contract. Accordingly, the Parties now desire to amend the Master Contract to address certain unanticipated cost increases and provide

temporary an equitable, temporary price adjustment consistent with the purpose of this Master Contract.

F. The amendment set forth herein is within the scope of the Master Contract.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Master Contract, as previously amended, as follows:

1. TEMPORARY PRICE ADJUSTMENT. The Master Contract is amended to add the following provision:

TEMPORARY PRICE ADJUSTMENT. Notwithstanding any provision to the contrary, beginning October 15th, 2022, upon written request by Contractor, Enterprise Services will review, evaluate, and, as appropriate in its sole determination, approve temporary price adjustments pertaining to Master Contract goods impacted by unexpected costs that are beyond the Master Contract's applicable price adjustment procedures, if any; *Provided*, however, that:

- (a) Contractor must request such temporary price adjustment in writing and set forth the unexpected costs that are adversely impacting Contractor's specific Master Contract goods;
- (b) The unexpected costs must be unanticipated, beyond the reasonable control of Contractor, and impacting Contractor's industry/market segment (if the unexpected costs only are impacting Contractor and not its competitors, there will be no temporary price adjustment);
- (c) The unexpected costs must not be part of any other price adjustment (e.g., a PPI inflation adjustment) allowed or provided by the Master Contract and, if granted by Enterprise Services, the impact of any temporary price adjustment will be considered by Enterprise Services and factored into any other price adjustments as allowed or provided by the Master Contract;
- (d) Contractor must propose to Enterprise Services a reasonable, temporary price adjustment that, based on a material input percentage basis (or similar appropriate metric) for the goods equitably aligns Master Contract prices for impacted goods with the Master Contract's allocation of risk/return (e.g., Contractor's margin);
- (e) Contractor must document to Enterprise Services that Contractor already has implemented equivalent or greater price adjustments for Contractor's goods to other non-affiliated customers outside of the Master Contract based on the unexpected costs identified to Enterprise Services;
- (f) Contractor, acting in good faith, also must evaluate and, as appropriate, propose temporary price adjustments if costs for Contractor's Master Contract goods have unexpectedly decreased;
- (g) Enterprise Services, acting in good faith, will have sole discretion to approve the scope, amount, and duration of any temporary price adjustment;
- (h) Any such temporary price adjustment will be temporary and will include a stated period that will not exceed 180 days (Contractor, if circumstances warrant, may seek a subsequent temporary price adjustment); and

(i) Unless and until a temporary price adjustment is approved in writing by Enterprise Services, Contractor will not adjust Master Contract prices.

2. TEMPORARY PRICE ADJUSTMENT TERM AND PERCENTAGE: Enterprise Services grants a 6% temporary price increase for all products offered in Master Contract 06115 effective October 15th, 2022- April 15th, 2023. After expiration of this temporary price adjustment, Contractor must offer the prices that were adjusted by Amendment No. 3 dated of April 1st, 2022, unless it is extended in accordance with section 1(h) of this amendment.
3. NO CHANGE OTHER THAN AMENDMENT. Except as amended herein, the Master Contract is unaffected and remains in full force and effect.
4. INTEGRATED AGREEMENT; MODIFICATION. This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Master Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
5. AUTHORITY. Each party to this Amendment, 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 Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
6. ELECTRONIC SIGNATURES. An electronic signature of this Amendment or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
7. COUNTERPARTS. This Amendment 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 Amendment 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 Amendment.

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

TOYOTA LIFT NORTHWEST,
AN OREGON CORPORATION

By: *Danielle Rouseau*
Name: Danielle Rouseau
Title: Director of Sales operations
Date: OCT. 10th, 2022

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: *Kelli Carmony*
Name: Kelli Carmony
Title: Procurement Supervisor
Date: October 13, _____, 2022