



Washington State
**DEPARTMENT OF
ENTERPRISE SERVICES**

REGIONAL CONTRACT

No. 08721

FOR

**FUELS: GASOLINE, DIESEL, AND RENEWABLE
NORTHWEST 1 REGION: Renewable Diesel**

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

CHRISTENSEN, INC.

Dated July 15, 2024

REGIONAL CONTRACT

No. 08721

FOR

NORTHWEST 1 REGION: Renewable Diesel

This Washington Statewide Contract (“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 Christensen, Inc., a Washington corporation (“Contractor”) and is dated and effective as of July 15, 2024.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish enterprise procurement solutions, including contracts, for goods and/or services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature also has authorized Enterprise Services to make these contracts available, pursuant to an 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. Pursuant to its statutory authority, Enterprise Services is establishing a Contract for Fuels: Gasoline, Diesel, and Renewables that is designed to enable eligible purchasers to procure specified delivery of fuel from the awarded Contractor in a cost-effective, efficient manner using the terms and conditions of the Contract. The Contract is limited to delivery of fuels.
- C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 08721 dated September 2, 2021. The Competitive Solicitation was structured to meet purchaser needs and designed to result in an award of a Contract, by region and by delivery method and renewable fuel type, in which the State of Washington was divided into seven regions. In addition, within four (4) regions, Enterprise Services structured the Competitive Solicitation to address state procurement priorities pertaining to qualified Washington Small Businesses and Certified Veteran-Owned businesses.
- D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder for Northwest 1 Region: Renewable Diesel.
- E. Enterprise Services has determined that entering into this Contract will meet the identified needs and be in the best interest of the State of Washington.
- F. The purpose of this Contract is to enable eligible purchasers to purchase fuel delivery 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 Contract is five and a half (5.5) months, commencing July 15, 2024, and ending December 31, 2024; *Provided*, however, that if Contractor is not in default and if, by October 15, 2024, in Enterprise Services' reasonable judgment, Contractor satisfactorily has met the performance-based goals for contract extension, Enterprise Services shall extend the term of this Contract, by written amendment, for up to twenty-four (24) additional months. Such extension amendment shall be on the same terms and conditions as set forth in this Contract. To earn the performance-based Contract term extension, Contractor must achieve the following performance-based metrics:

PERFORMANCE METRIC	PERFORMANCE REQUIREMENT FOR CONTRACT EXTENSION
Fuel Specifications:	Continuously meets or exceeds the Fuel Requirements set forth in Exhibit A.
Fuel Delivery Requirements:	Meets or exceeds the Fuel Delivery Requirements set forth in Contract ninety percent (90%) of the time for each Purchaser.
Timely Delivery:	Must meet the delivery window for at least 97% of all deliveries.
Insurance Endorsements:	Timely provide to Enterprise Services at the designated address, without exception, annual insurance endorsements for the insurance coverages required by this Contract. <i>See Exhibit C – Insurance Requirements</i> at § 4.
Vendor Management Fee:	Timely remit to Enterprise Service, with no less than a 75% on time rate over the contract term, the applicable Vendor Management Fee (VMF). <i>Note:</i> Contractor must pay the VMF within thirty (30) days of invoice from Enterprise Services. If Contractor is delinquent in timely paying the VMF for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor will not be eligible for a performance-based extension.
Contract Sales Reports:	Timely provide to Enterprise Services, with no less than a 75% on time rate over the contract term, the required Contract quarterly sales reports. <i>Note:</i> Contractor must provide the quarterly sales reports to Enterprise Services within thirty (30) days of the quarter's end. If Contractor is delinquent in providing the quarterly sales reports for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor will not be eligible for a performance-based extension.

2. **ELIGIBLE PURCHASERS.** This Contract may be utilized by any of the following types of entities (each an eligible "Purchaser"):
- 2.1. **WASHINGTON STATE AGENCIES.** All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - 2.2. **WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION.** Any the following institutions of higher education (colleges) 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. CONTRACT USAGE AGREEMENT PARTIES. Any of the following types of entities that have executed a 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., public benefit nonprofit corporations as defined in RCW 24.03A.245) who receive federal, state, or local funding); and
 - Federally recognized Indian Tribes located in the State of Washington.

3. SCOPE: INCLUDED GOODS AND/OR SERVICES & PRICES.

- 3.1. CONTRACT SCOPE. Pursuant to this Contract, Contractor is authorized to sell and provide only those Goods and/or Services set forth in *Exhibit A-Included Fuels* for the prices set forth in *Exhibit B – Prices*. Contractor shall not represent to any Purchaser under this Contract that Contractor has contractual authority to sell or provide any Goods and/or Services beyond those set forth in *Exhibit A – Included Fuels*.
- (a) Goods. For purposes of this Contract, “Fuels” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased by Purchaser pursuant to this Contract and as identified in the Purchase Order.
 - (b) Services. For purposes of this Contract, “Services” means all services of any nature ordered by Purchaser pursuant to this Contract and as identified in the Purchase Order.
 - (c) Specifications. Where applicable, specifications for Fuels and/or Services are detailed in the Purchase Order. Unless otherwise specified in the Purchase Order, all Fuels and/or Services provided shall be new and unused of the latest model or design.
- 3.2. STATE’S ABILITY TO MODIFY SCOPE OF CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the Fuels and/or Services included in this Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) calendar days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.
- 3.3. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Contract, Contractor guarantees to provide the Fuels/Services at no greater than the prices set forth in *Exhibit B – Prices*.

3.4. **CONTRACT INFORMATION.** Enterprise Services shall maintain and provide to eligible Purchasers information regarding this Contract, including scope, pricing, and lowest responsive, responsible bidder designation. In addition, Enterprise Services identifies awarded contractors who qualify as Washington Small Businesses, Certified Veteran-Owned Businesses, or that, pursuant to the Contract provide Fuels/Services that meet specified state procurement priorities as set forth in the Competitive Solicitation.

4. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time any order is placed pursuant to this 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 Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.

4.2. **TAXES.** Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.

4.3. **LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS.** Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.

4.4. **SUSPENSION & DEBARMENT.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that neither Contractor nor its principals or affiliates presently are nor have ever been 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.

4.5. **WAGE VIOLATIONS.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been 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 49.46, 49.48, or 49.52.

4.6. **Pay Equality.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, 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) calendar days, Enterprise Services may suspend or terminate this Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Contract and/or any agreement entered into pursuant to this Contract.

- 4.7. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 4.8. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS. Contractor represents and warrants, as previously certified in Contractor's Bidder's 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.
- 4.9. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or purchase order under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) have been indicted for or otherwise criminally or civilly charged by a government entity (federal, state, local, or tribal) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state, local, or tribal) terminated for cause or default.
- 4.10. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor 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 Enterprise Services and Purchasers' employees.
- 4.11. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that Contractor is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of Contractor's information therein is current and accurate and that throughout the term of this Contract, Contractor shall maintain an accurate profile in WEBS.
- 4.12. WASHINGTON'S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 4.13. CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that Contractor shall use commercially reasonable efforts both to promote and market the use of

this Contract with eligible Purchasers and to ensure that those entities that utilize this 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 Fuels and/or Services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor 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.

- 4.14. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 4.15. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Fuels and/or Services that are the subject of this Contract.
- 4.16. OPERATIONAL CAPABILITY. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor has the operational and financial capability to perform the Contract.
- 4.17. CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Contract or a similar contract, is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services (including the Purchasers hereunder) for a period of sixty (60) calendar days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington and such Purchasers; *Provided*, however, that, if costs are incurred, Contractor shall be compensated for such costs consistent with the terms and conditions pertaining to this Contract for the sixty (60) day period immediately before such transition.
- 4.18. FEDERAL CLAUSES/FTA CLAUSES. Contractor represents and warrants that for any Purchase Order for Fuel pertaining to any eligible Purchaser that is subject to the Federal Transportation Authority provisions (e.g., the Purchaser is using FTA funds in whole or in part to pay for the Fuel Products), the Purchase Order also shall be subject to the FTA Clauses set forth in *Exhibit D – FTA Clauses for Fuel*.
- 4.19. FUEL QUALITY. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor shall provide only fuels that meet or exceed the quality standards set forth in *Exhibit A – Included Fuels*.
- 4.20. FUEL DELIVERY REQUIREMENTS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor is able to and will meet or exceed the fuel delivery requirements set forth in *Exhibit A – Included Fuels*.

5. QUALITY; WARRANTY; REMEDIES.

- 5.1. **FUELS WARRANTY.** Contractor warrants that Fuels provided pursuant to this Contract comply with the fuel specifications set forth in *Exhibit A – Included Fuels* and shall be delivered in full compliance with applicable law (“Fuels Warranty”). Contractor further warrants that it has good and marketable title to the Fuels and shall keep Purchaser’s property free of liens. If Purchaser receives notice of a lien caused by Contractor, Purchaser may withhold any payment otherwise due Contractor until Contractor submits proof, in a form satisfactory to Purchaser, that all lienable claims have been fully paid or waived.
- 5.2. **5.2. FUELS REMEDY.** If Goods do not comply with the Fuels Warranty, at Purchaser’s election, Contractor promptly shall remedy the defect by removing, repairing, correcting, and replacing any defective Fuels. Contractor’s Fuels Warranty support shall include, at Contractor’s sole expense, all technical support, parts, materials and equipment, and labor, including freight and “in/out” costs required to address the defect. If, in Purchaser’s judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor shall 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.
- 5.3. **SERVICES WARRANTY.** Contractor warrants that: (a) Services shall be performed in a timely, efficient, and professional manner; (b) all Contractor personnel assigned to perform Services shall have the necessary skill and training; and (c) Services shall be performed in a manner consistent with the standard of care in the industry (“Services Warranty”). The Services shall comply with the delivery requirements set forth in *Exhibit A – Included Fuels*.
- 5.4. **SERVICES REMEDY.** If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at Purchaser’s election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to Purchaser or refund the amounts paid for the Services.
- 5.5. **IT WARRANTY.** Contractor warrants, that all hardware, software, and firmware associated with Fuels or Services (“IT Fuels” and “IT Services”, respectively) will not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of Purchaser, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party (“IT Warranty”). The IT Warranty will expire twelve (12) months after the date IT Fuels are delivered or IT Services are complete, as applicable.
- 5.6. **IT REMEDY.** If IT Fuels or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at Purchaser’s election, promptly will: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Fuels; (b) re-perform or correct the non-conforming IT

Services at no additional cost to Purchaser; or (c) refund the amounts paid for IT Services and IT Fuels.

5.7. **FAILURE TO REMEDY.** If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from Purchaser, or if an emergency exists rendering it impossible or impractical for Purchaser to have Contractor provide a remedy, Purchaser may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Fuels, Services, IT Fuels, or IT Services, in which case Contractor shall reimburse Purchaser for its actual costs or, at Purchaser's option, Purchaser will offset the costs incurred from amounts owing to Contractor.

5.8. **TECHNICAL SUPPORT.** During any applicable warranty period, Contractor shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. Contractor shall maintain a technical support hotline to address breakdowns and safety incidents.

6. SAFETY; SECURITY; CONTRACTOR REQUIREMENTS WHILE ON PURCHASER'S PREMISES. Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

6.1. **REGULATORY REQUIREMENTS/SAFETY.** Fuels/Services supplied by Contractor shall meet all OSHA and other safety-related federal, state, and/or local regulatory agency requirements applicable to the Fuels/Services.

6.2. **MATERIAL SAFETY DATA SHEETS.** As applicable, Contractor shall provide Purchaser with all appropriate Material Safety Data Sheets ("MSDS") at the time of delivery of each shipment of Fuels which requires such compliance and/or and for materials used by Contractor while performing Services and any updates of the same.

6.3. **CLEAN-UP.** If Contractor, its agents, employees, or subcontractors perform onsite Services, Contractor, at its cost, will remove all excess materials, equipment, packaging, and garbage within the scope of its performance of Services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a Site after completion of work, Purchaser will have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.

6.4. **ACCIDENT AND INJURY REPORTING.** If Contractor, its agents, employees, or subcontractors are present at Purchaser's premises, Contractor promptly shall report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist Purchaser in any investigation of incidents.

6.5. **ON-SITE REQUIREMENTS.** As applicable, while on Purchaser's premises or while interacting with Purchaser and/or Enterprise Services' personnel, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, safety, health, and security requirements and not interfere with Purchaser's operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access Purchaser's premises shall be adequately trained and at all times comply with Purchaser's requirements.

- 6.6. IT SECURITY POLICIES. Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which shall be made available to Contractor upon request.
- 6.7. SECURITY CLEARANCE. Some deliveries will be made to secure facilities and drivers entering those facilities will have to have clearance prior to admittance. The clearance applications will be made available upon request. Contractor must obtain the required clearance before any scheduled delivery to secure facilities.
- 6.8. SAFETY STANDARDS. The handling of the fuel shall comply with all applicable safety laws and standards of the State of Washington and standards established by the United States Department of Transportation, the United States Department of Labor's Occupational Safety and Health Act (OSHA), accepted industry practices, and City/County requirements.

7. SUBCONTRACTORS.

- 7.1. CONTRACTOR RESPONSIBILITY. Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Contract, Contractor shall: (a) incorporate Contractor's responsibilities under this Contract into its subcontracts; (b) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every Contractor obligation set forth in this Contract; (c) be the sole point of contact for Enterprise Services and any Purchasers regarding all contractual matters; (d) ensure that such subcontractors are registered in WEBS; and (e) defend, indemnify, and hold Enterprise Services and Purchasers harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier). Prior to utilizing any subcontractor to perform this Contract, Contractor shall provide written notice to Enterprise Services' contract administrator. Such notice shall confirm that the subcontractor is registered in WEBS and provide the necessary information for Enterprise Services' contract administrator to include such subcontractor(s) in Washington's Purchasing Contract Management System (PCMS).
- 7.2. REPORTING. If Contractor is required to report to Purchaser and/or Enterprise Services, such report(s) shall include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated 'rollup' report combining Contractor and subcontractor data.
- 7.3. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any Contractor representations or certifications set forth in this Contract shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington's Statewide Payee Desk, unless Purchaser shall pay such subcontractor directly.

8. USING THE CONTRACT – PURCHASES.

- 8.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order Fuels and/or Services from this Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but including, at a minimum, 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 Purchase Orders must reference the Contract number. The terms of this Contract shall apply to any Purchase Order and, in the event of any conflict, the terms of this 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 any other agreement modify the terms and conditions of this Contract.

- (a) **WILL CALL ORDERING REQUIREMENTS.** Will Call Purchasers will place fuel orders on an as needed basis for specific fuel sites. Will Call may include on-going regularly scheduled deliveries.
 - i. **Order Placement.** Purchaser will place Will Call order with Contractor representatives. Contractor shall acknowledge all Purchaser Orders from Purchasers with valid customer accounts within one (1) business day. Contractor will deliver request fuel volume within two (2) business days after a verbal, electronic, written or faxed order is received. Purchaser will set delivery time and special requirements for deliver.
 - ii. **Fuel Amount.** The amount of fuel product delivered by Contractor must be reasonably equal (within +/- 2%) to the amount of fuel product ordered by Purchaser.
- (b) **KEEP-FULL ORDERING REQUIREMENTS.**
 - i. **Setup and Order Placement.** Keep-Full service requires Contractor and Purchaser to have a post award agreement that meets Purchaser's needs. Contractor guarantees that their supply agreements provides sufficient capacity to satisfy Purchaser's needs. In general, the state expects that tank levels never fall below 20% of capacity before refueling occurs. Purchasers will be allowed to adjust this percentage up or down in their subsequent Keep-Full agreement depending upon their own unique business requirements. Tanks that are 35% full (15 percentage increments of tank capacity above the lower threshold) will not incur fee other than the price of the fuel unless otherwise agreed in the Keep-Full agreement.
 - ii. **Initiating Keep-Full.** Prior to initiating Keep-Full coverage, Purchasers will be required to provide Contractor with their specific delivery requirements, which identifies information such as:
 - a. Fuel tank profile information (i.e. site location, site contact, tank size, fuel type, etc.)
 - b. Available delivery time frames and/or the days and times when deliveries can or cannot occur.
 - c. Minimum allowable tank level percentage before refueling is to occur.
 - d. Delivery access procedures, protocols, and or special instructions, if any.
 - e. Requested activation date (not to exceed five calendar days of request).
 - f. Place lower delivery service fees, if any, in the Special Instructions box.
 - iii. **Keep-Full Inventory Management.** Contractor shall monitor tank inventory levels to effectively manage tank inventories. Purchasers will be responsible for providing tank level data to the Contractor in a

mutually agreed upon method. Purchasers will notify Contractor of any anticipated unusual increases in fuel demand. Contractor shall identify how often tank level data should be communicated relevant to Purchaser's fuel demand and the preferred communication method. If Keep-Full tanks are equipped with an electronic tank level monitoring system, Purchaser may choose to grant Contractor remote access to the data. If both parties agree, Contractor may equip tanks with electronic tank level monitoring equipment. Contractor will be responsible for the cost of maintaining the equipment unless otherwise agreed to by the Purchaser.

- iv. Keep-Full Contract Additions. Purchasers may activate additional tanks or initiate Keep-Full coverage for additional fuel sites. Purchaser and Contractor will mutually agree on any changes to their agreement to include added sites or tanks.
- v. Keep-Full Tank Deactivation. Purchaser will immediately notify Contractor when a fuel storage tank is deactivated and state the last day of Keep-Full service in writing. Contractor shall timely acknowledge the notification within two business days and cease service to tank or site as stated from the Purchaser.

8.2. DELIVERY REQUIREMENTS. Contractor must ensure that the Fuels/Services are delivered or provided as required by this Contract, the Purchase Order used by Purchaser, and as otherwise mutually agreed in writing between Purchaser and Contractor. The following apply to all deliveries:

- (a) Deliveries are to be made in a professional manner and in accordance with industry- standard best practices. Contractor shall comply with all applicable laws, ordinances, permits, and not unreasonably encumber the premises with equipment, materials and personnel. Delivery sites will be kept free of the accumulation of waste, spillage, or other debris caused by the delivery and the unloading of the fuel.
- (b) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchaser's normal work hours and within the time period mutually agreed in writing between Purchaser and Contractor.
- (c) In the event that Contractor fails to fulfill delivery terms, Purchasers may purchase fuel from another supplier and Contractor will be responsible for paying any additional acquisition costs. Recurring defaults or other non-compliance to delivery terms shall be grounds for contract termination and recovery of damages.
- (d) Contractor shall verify delivery hours of each location placing orders. If Contractor arrives outside the scheduled delivery hours and is unable to or denied access to making the delivery, Purchaser shall incur no expense and Contractor assumes all liabilities and responsibility for that attempted delivery.
- (e) There will be no minimum order quantities. Purchasers may order split loads upon request to multiple fuel sites to reduce delivery fees. Fuel delivery fees are

deemed not to exceed fees; they represent a ceiling but not a floor. Contractor will charge delivery fees to customers based on the distance from the rack to the fuel site based on the Delivery information in the Price Sheet. Contractor shall over the life of the contract find innovative ways to reduce the impact of delivery fees.

- (f) Some delivery sites may have security restrictions requiring delivery personnel to pass a criminal background check before access is granted. In such cases, all on-site service personnel used to service these accounts must comply with Purchaser's security requirements and complete the necessary paperwork in order to perform the criminal background check. Purchaser will coordinate this activity and provide Contractor sufficient advance notification of this requirement. Contractor shall comply with Purchaser's security requirements within thirty (30) days of commencement.
- (g) Contractor and Purchaser shall agree on a delivery window, which shall not be more than two (2) hours, as well as a cut off time prior to the end of normal business hours during which the fuel shall be delivered. If Purchaser has provided contact information, Contractor shall contact the Purchaser with an estimated delivery delay to the agreed upon time, which shall not be less than four (4) hours advanced notice.
- (h) Contractor shall fill tanks in accordance with industry-standard best practices and are not to be overfilled such that tank monitoring equipment malfunctions. Purchaser will be allowed to deduct any costs associated to resetting a tank's monitoring equipment from the invoice should an overfill cause the equipment to malfunction.
- (i) If Purchaser and Contractor arrange a mutually agreeable delivery date and time and Contractor is unable to fulfill the delivery (within ½ hour of the agreed upon time) due to circumstances caused by Purchaser. Contractor may bill the purchaser a demurrage fee and then reschedule the delivery.
- (j) Purchaser's fuel tank(s), for which a timely, valid order has been submitted, shall not run out of fuel as a result of any action or failure to act directly attributable to Contractor. Examples include, but are not limited to, actions such as Contractor's opting to prioritize deliveries to other customers for the sake of increased profitability or failing to maintain a reliable fuel supply chain.
- (k) Multiple Deliveries (Equitable Delivery Fee). For deliveries to multiple fuel sites with the same vehicle would require equitable split of the delivery fee. This equitable division of the delivery fee will share cost for the common miles of the delivery. This way the first delivery does not front load the delivery cost. Contractor and Purchasers will work together on the equitable delivery. One method for Equitable Delivery Fee is equally splitting the shared distance from the rack to the location between all customers.
- (l) Contractor shall bear all risk of loss, damage, or destruction of the Fuels and/or Services ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence.
- (m) All written materials associated with this Contract shall be identified by the Contract number set forth on the cover of this 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.

8.3. EMERGENCY DELIVERY. In the event of demand spikes, regional or industry wide fuel shortages, Governor-proclaimed state of emergency, and catastrophes, Contractor shall exercise commercially reasonable efforts to make delivery of Fuel Products to Purchasers in a priority manner.

- (a) During times of Governor-proclaimed state of emergency and/or catastrophic events, Contractor shall keep delivery sources filled with employees on call 24 hours a day 7 days a week.
- (b) In the event of an emergency, Contractor shall use commercially reasonable efforts to:
 - i. Ensure that Purchasers are supplied with adequate amounts of fuel in preparation for emergency events;
 - ii. Ensure deliveries to Purchasers are Contractor's first priority to the extent commercially reasonable;
 - iii. Establish priorities for deliveries to Purchasers based on direct communications with Purchasers or interactions with the Washington State Department of Emergency Management (and Enterprise Services), as may be required;
 - iv. Leverage its supply chain, including backup supplies, to insure continuous supply to all Purchasers during an Event; and
 - v. Provide Fuel Products whenever it is safe to do so. Roads will be determined to be unsafe if they are declared as closed by the state or federal government or upon the reasonable business judgment of Contractor.
 - vi. This reasonable business judgment shall be similar to the judgment exercised by Contractor over the previous twenty-four (24) months.
- (c) Purchaser will be responsible for identifying the threat level for emergency deliver timeline. Washington Department of Emergency Management also may identify the threat level, which shall supersede the Purchaser's identified threat level. During times of Governor proclaimed state of emergency and/or catastrophic events Contractor shall make deliveries as follows:
 - i. Immediate threat to persons or property: Within four (4) hours. Immediate threat means that persons or property are currently subject to harm. For example, a person is in need of immediate medical attention and/or property is currently damaged due to an Event.
 - ii. Imminent threat to persons or property: Within ten (10) hours. Imminent threat means that persons or property will be subject to harm within the near future (i.e. within the next 10 hours) due to an Event. For example, if a Purchaser does not have fuel within the near future, persons will need medical attention after that time or property will be subject to damage after that time.
 - iii. Impending threat to persons or property: Within eighteen (18) hours. Impending threat means that persons or property will be subject to harm within the foreseeable future due to an Event. For example, a Tsunami is

forecast, within a reasonable amount of accuracy, to impact Washington or the roads will not be able to be cleared, therefore making them hazardous to travel, if fuel is not delivered.

- (d) Deliveries may be reduced, increased, or delayed, depending on the emergency event and the immediate need of the Purchasers in order to ensure that no Purchasers run out of fuel. If a delivery is made short, Contractor shall contact the affected Purchasers prior to delivery to inform them of the short. If the Purchasers provides a reasonable business justification for refusing the short (for example, their usage rate demonstrates the location risks running out of fuel due to the short delivery) then Contractor shall deliver the fuel in the quantity ordered.
- (e) During times of demand spikes, regional or industry wide fuel shortages, urgent need, Governor-proclaimed state of emergency, catastrophes, and in the event of fuel supply shortages at the terminal established as the primary point of supply for any particular Purchasers, Contractor shall notify the affected Purchasers of the shortage and the expected date of return to normal operations.
- (f) In the event of an emergency, Contractor, for the duration of the emergency, may charge its standard emergency fee (which is charged to all other purchasers). Such fee shall be included on the invoice as a separate line item in addition to the standard delivery fee. If no standard emergency fee exists, then a reasonable emergency premium is to be added to the invoice (as a separate line item) in addition to normal contract service fees; *Provided*, however, that any such emergency fee must be invoiced to all of Contractor's customers.

- 8.4. EMERGENCY PLAN. In the event of an emergency, Contractor will guarantee fulfillment of an emergency Keep-Full delivery within a maximum of six (6) hours of a verbal, electronic, written or faxed order. Emergency orders are to be top priority and Contractor must be equipped and prepared to successfully fulfill an emergency delivery 7 days a week, 24 hours a day. Contractor shall furnish emergency order contact information and always be poised to receive and respond to an emergency order. Contractor must provide the emergency plan upon purchaser's request.
- 8.5. NEGLIGENCE. Contractor assumes all liability and responsibilities for the handling and transportation of the fuel until it has been placed in the Purchasers storage tank. Contractor shall be responsible for any and all damage to buildings and/or properties caused by delivery trucks, operating personnel and damages or services necessitated by the failure to deliver fuel or the delivery of faulty product and equipment. Any repair or clean up services shall be made at Contractor's expense and to the satisfaction of the Purchaser. If Contractor fails to comply with these requirements within a reasonable time, Purchasers may deem it expedient to repair damages and perform the necessary services at the expense of Contractor. Should the fuel be unloaded into the incorrect tank (i.e. diesel fuel into a gasoline storage tank), Contractor is responsible for the immediate removal, cleaning, replacement of all products, any resulting damages, and the loss of revenue.
- 8.6. SPILL RESPONSIBILITIES. Contractor is solely responsible for any and all spills, leaks or releases, which occur as a result of, or are contributed to by, the actions of its agents, employees, or subcontractors. Contractor shall take all measures as required by law to prevent fuel spills (which includes but is not limited to, any spilling, leaking, pumping, pouring, emitting,

emptying, or dumping into or onto any land or water). In the event of a fuel spill, leak, or release, Contractor shall be responsible for the required notifications, containment, clean up, and disposal of the oil spilled and agrees to take the following actions:

- (a) If warranted, evacuate and warn those persons that may be affected by the spill.
- (b) Immediately contact the appropriate Emergency Response Agencies as required.
- (c) Notify the appropriate purchaser representative of the spill within two (2) hours.
- (d) Clean up the spill in a manner that complies with federal, state, and local laws, regulations, rules and standards.
- (e) For spills, that occur other than on a Purchaser's owned or leased property; provide all notifications and reports as specified by federal, state, and local laws, regulations, rules, standards and permits.
- (f) Attend additional spill prevention training (at the contractor's expense).
- (g) Acquire (at Contractor's expense) additional spill prevention equipment.

Should Contractor fail or refuse to take the appropriate and timely containment, clean up, and disposal actions, the purchaser may do so and the contractor shall reimburse the purchaser for all expenses incurred including fines levied by appropriate agencies of federal, state, or local governments. If there are no moneys due, the remediation costs shall be the responsibility of Contractor or submitted as a claim to the bonding company.

- 8.7. **SPILL NOTIFICATION AND RESPONSE PLAN.** Upon request of Purchaser, Contractor will provide a copy of their spill notification and response plan within ten (10) business days after request. Any updates to the Spill Notification and Response Plan will be provided to Enterprise Services within five (5) business days.
- 8.8. **ENVIRONMENTAL CONSIDERATIONS.** Contractors shall comply with all environmental regulations relevant to the contracted refueling service provided.
- 8.9. **TANK TESTING.** There may be occasions when Purchaser's tanks need to be "topped off" for testing purposes. In such case, Purchaser will be allowed to initiate a "top off" order and the already established contract pricing is to be applied. If Purchaser requires the delivery to occur on a specific date, Purchaser is to provide Contractor with at least five (5) business days' advance notice.
- 8.10. **RECEIPT AND INSPECTION OF FUELS AND/OR SERVICES.** Fuels and/or Services purchased under this Contract are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of Fuels and/or Services that are not in accordance with this Contract and Purchaser's Purchase Order. If there are any apparent defects in the Fuels and/or Services at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Fuels and/or Services or, at Purchaser's option, Purchaser may note any such damage on the receiving report, decline acceptance, and deduct the cost of rejected Fuels and/or Services from final payment. Payment for any Fuels and/or Services under such Purchase Order shall not be deemed acceptance.
- 8.11. **ADDITIVES/CONDITIONERS/TREATMENTS.** At the Purchaser's request, Contractor may be required to supply and blend a fuel additive, conditioner or treatment products to the fuel purchased. The price charged for additives, conditioners or treatments shall not exceed the lowest price

charged to other purchasers and the prices are to be comparable to current market rates of other suppliers. At Purchaser's request, Contractor is to provide supporting documentation to validate price compliance.

8.12. BIODIESEL BLENDING.

- (a) Blending and handling of biodiesel must conform to the most current [Biodiesel Handling and Use Guidelines](#) as published by the U.S. Department of Energy.
- (b) Contract shall use the blending methods below in order of precedence:
 - i. Premixed blend from the rack in the ordered percentage, when available consistently and reliably, filled directly into the delivery truck's storage tank.
 - ii. Injection blending using a true in-line computerized injection system that regulates the flow so that both products proportionally mix prior to entering the delivery truck's storage tank.
 - iii. In line blending using the two hose method where the biodiesel hose and the diesel hose form a "Y" connection just prior to entering the truck storage tank. Contractor shall adjust flow rates to ensure the proper mix and concentration is made for each storage tank.
 - iv. Splash blending at the rack. The biodiesel will be added to the delivery truck's storage tank first, and then the tank will be filled under pressure with petroleum diesel to achieve the requested biodiesel blend in the delivery truck's storage tank.
- (c) All biodiesel blends will be transferred using clean hoses. If delivery vehicle has dedicated hose capability, Contractor shall use dedicated hoses properly labeled for that purpose. Contractor must ensure hoses will not contaminate the fuels or tanks and Contractor shall use cleaning techniques that prevents contamination.

8.13. COST MITIGATION. In accordance with [RCW 35.58.262](#), some Purchasers have the right to employ various cost mitigation strategies (i.e. hedging) in acquiring fuel via contractors. These strategies may include to futures contracts, swap transactions, option contracts, costless collars, and long-term storage. Purchasers who elect to utilize these cost-mitigation strategies may be charged a fee or other funding mechanisms to cover the cost to deploy these strategies. Enterprise Services accepts no responsibility for these services provided to Purchasers under [RCW 35.58.262](#) under the Contract.

8.14. OPERATIONAL CAPABILITY. Contract shall meet the operational capabilities:

- (a) **TRAINING.** Contractor will have delivery drivers trained for specific site requirements. Purchaser and Contractor may schedule site trainings for drivers at Contractor's expense. Contractor will have at least three (3) drivers trained for each site. In the event that the primary driver is unavailable, one of the alternate drivers will deliver to the location.
- (b) **SUPPLY AGREEMENT.** Contractor shall use its best efforts to maintain uninterrupted relationships with refineries, pipelines, terminals, and other sources of fuel supply and distribution through supply agreements necessary to supply Purchasers with the total quantity of required fuel for the life of the contract. These relationships and agreements must support the State of Washington's Fuel Product's needs.

- 8.15. **FLEET.** Contractor shall use its best efforts to insure that their carriers provide a consistently high level of professionalism, workmanship, and customer service. Contractor shall maintain a sufficient fleet of fuel trucks, either with subcontractors or under their direct control, to meet delivery needs of the State and this Contract. The on-time performance of all carriers must be measured by Contractor and corrective actions shall be taken to remedy poor carrier performance. Notwithstanding any provision to the contrary, Contractor must remove any particular carrier or delivery personnel from providing Service to any particular Purchaser upon Enterprise Services' or the Purchaser's request and reasonable business judgment.

9. INVOICING & PAYMENT.

- 9.1. **CONTRACTOR INVOICE.** Contractor shall submit properly itemized invoices to Purchaser's designated invoicing contact for Fuels and/or Services delivered under this Contract. Such invoices shall itemize the following:

- (a) Contract No. 08721;
- (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) Applicable Fuels and/or Services;
- (f) Invoice amount;
- (g) Applicable taxes;
- (h) Delivery fee calculation;
- (i) Payment terms, including any available prompt payment discounts.
- (j) Cap-At-the-Rack Cost; and
- (k) Low Carbon Fuel Standard(LCFS) Cost

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

- 9.2. **TIMELY INVOICE.** Failure to provide invoice at the time of delivery will create billing delays and accounting issues for Purchasers.

- (a) All invoices will list the type of fuel delivered. The type of fuel delivered is the actual final blends not the components of the blended fuel. For example, if purchaser request a blend of B10 a 90% volume of USLD and 10% volume of B99. The invoice will be listed as B10 and price at the contract rate.
- (b) All common blends (B5, B10, B20, R80/R20) will be priced at the rate listed in *Exhibit B – Prices*. For all other blends, prices would be based on ratio of blends using the rates in Exhibit B-Prices. For example, for the purchase of B15 the price would be 15% of B99 and 85% of USLD.
- (c) Prices of all fuels on each invoice will be based on the With CAR OPIS rates listed from the day before delivery. This pricing mechanism is intended to allow for invoices to be provided at the time of delivery. Contractor shall ensure that the prices invoiced (fuel price + Cap at the Rack Cost, and + LCFS cost if applicable)

match the prices listed on the Enterprise Services' website (link: [DESFuelPricePage.xls \(live.com\)](#)).

- (d) If the rack location (identified rack pricing) of fuels is Portland, Oregon, Contractors may add Cap-at-the-Rack and LCFS costs, if applicable, to the OPIS Portland rate.
- (e) Will Call deliveries must be accompanied with an invoice at the time of delivery.
- (f) Keep-Full invoices will be sent to Purchaser within eight (8) hours after delivery of fuel. This invoice will include a confirmation of the volume delivered with corroborating documents, such as a bill of landing, stick measuring, or tank monitoring readouts.
- (g) Contractor shall provide a corrected invoice available within two (2) business days from date of delivery, showing the correct/up-to-date amount.
- (h) For each relevant line item for fuel, Contractor will invoice purchaser utilizing the With CAR OPIS rates, relevant rack locations, and apply Contractor OPIS Low +/- from *Exhibit B-Prices* to determine the price for Purchasers. Contractor will utilize the With CAR OPIS base rate for each relevant fuel types, see chart below. If the relevant With CAR OPIS rate for any ordered fuel types are not available, Contractor will work with Purchasers to determine the relevant With CAR OPIS rate for the fuel purchase.
- (i) Contractor will use With CAR OPIS rates from the OPIS Calendar Day benchmark report.

Fuel Types	With CAR OPIS rate
Gas UNL Regular 7.8 RVP	"OPIS Gross Clear Prices" (7.8 RVP, Unl, LOW RACK)
Gas UNL Regular 9.0 RVP	"OPIS Gross Clear Prices" (9.0 RVP, Unl, LOW RACK)
Ethanol 10% 7.8 RVP UNL	"OPIS Gross CBOB Ethanol (10%) Prices" (7.8 RVP, Unl, LOW RACK)
Ethanol 10% 9.0 RVP UNL	"OPIS Gross CBOB Ethanol (10%) Prices" (9.0 RVP, Unl, LOW RACK)
E85% UNL	"OPIS Gross E-85 Prices" (Unl, LOW RACK)
ULSD #1 Clear	"OPIS Gross Ultra Low Sulfur Distillate Prices" (No. 1, LOW RACK)
ULSD #2 Clear	"OPIS Gross Ultra Low Sulfur Distillate Prices" (No. 2, LOW RACK)
ULSD #1 Dyed	"OPIS Gross Ultra Low Sulfur Red Dye Distillate Prices" (No. 1, LOW RACK)
ULSD #2 Dyed	"OPIS Gross Ultra Low Surtur Red Dye Distillate Prices" (No. 2, LOW RACK)
Biodiesel B5	"OPIS Gross Wholesale B5 SME Biodiesel Prices" (ULS No. 2, LOW RACK)
Biodiesel B10	"OPIS Gross Wholesale B10 SME Biodiesel Prices" (ULS No. 2, LOW RACK)
Biodiesel B20	"OPIS Gross Wholesale B20 SME Biodiesel Prices" (ULS No. 2, LOW RACK)

Biodiesel 99 (clear / dyed)	"OPIS Gross Wholesale B99 SME Biodiesel Prices" (w/o Rin, LOW RACK)
B20/R80 blend	sum of 80% of renewable rate and 20% of the biodiesel 99% rate in that respective region
Renewable Diesel	"OPIS Gross Ultra Low Sulfur Distillate Prices" (No. 2, LOW RACK)
Isobutanol	"OPIS Gross Clear Prices" (9.0 RVP, Unl, LOW RACK)
Bio-isooctane	"OPIS Gross Clear Prices" (9.0 RVP, Unl, LOW RACK)
Biodiesel 99 (dyed)	"OPIS Gross Wholesale B99 SME DYE SME Biodiesel Prices" (w/o Rin w Rin, LOW RACK)

- 9.3. **PAYMENT.** Payment is the sole responsibility of, and shall be made by, the Purchaser. Purchaser's obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Goods and/or Services. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Prices*, Purchaser's payment is due within thirty (30) calendar days of invoice. Purchaser retains the right of setoff for any amount due or owing to Purchaser. Purchaser may make payments electronically (e.g., ACH payments). Contractor shall provide information necessary to facilitate electronic payments. 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 shall not be considered late if a check or warrant is mailed within the time specified.
- 9.4. **OVERPAYMENTS.** Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar 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 refunds of overpayment(s) (either directly or by credit memo), Contractor shall pay Purchaser interest at the rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.
- 9.5. **ADVANCE PAYMENT PROHIBITED.** Except as authorized by law, Contractor shall not request or receive advance payment for any Goods and/or Services furnished by Contractor pursuant to this Contract.
- 9.6. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 9.7. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased Goods and/or Services. Contractor's invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchaser, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

10. CONTRACT MANAGEMENT.

10.1. 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 Contract. Enterprise Services' contract administrator shall provide Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Contract. The parties may change contract 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: Shapoor Naveed
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360)-407-2212
Email: DESContractsTeamMaple@des.wa.gov

Contractor

Attn: TRAVIS PAULSON
CHRISTENSEN INC
1912 S 146th ST
SEATTLE, WA 98168
Tel: (206) 971-7999
Email: travis.p@christenseausa.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.

10.2. 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 Contract.

- (a) Contractor shall have at a minimum one (1) primary and one (1) secondary representative who will be knowledgeable about the contractual requirements and will serve as the dedicated points of contact.
- (b) The Contractor representatives must be available for Purchaser service calls during standard business hours (8 a.m. to 5 p.m. PST Monday through Friday).
- (c) The Contractor representatives must respond to Purchaser inquiries within four (4) business hours.
- (d) Purchaser requests for customer service escalation shall be resolved within one (1) business day.
- (e) In addition to Contractor representatives, Contractor shall have a dedicated, U.S. based staff for Purchaser service calls, who are familiar with the contract and its pricing parameters. Purchaser service must be available to take calls and respond to e-mails, Monday through Friday, during the hours of 8 a.m. to 5 p.m. PST.

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

Enterprise Services

Contractor

Attn: Legal Services Manager
 Washington Dept. of Enterprise Services
 PO Box 41411
 Olympia, WA 98504-1411
 Email: greg.tolbert@des.wa.gov

Attn: Scott Phillips
Christensen Inc
1060 Jadwin Ave
Richland, WA 99352
 Email: scott.phillips@christensenusa.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.

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

11.1. CONTRACT SALES REPORTING. Contractor shall report total Contract sales quarterly to Enterprise Services, as set forth below.

- (a) Contract Sales Reporting System. Contractor shall report quarterly Contract sales in Enterprise Services' Contract Sales Reporting System. Enterprise Services shall provide Contractor with a login password and a vendor number. The password and vendor number shall 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 Contract. If there are no Contract sales during the reporting period, Contractor must report zero sales.
- (c) Due dates for Contract Sales Reporting. Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all Contract sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

11.2. VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 0.05 percent on the purchase price for all 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:

$$\text{Amount owed to Enterprise Services} = \text{Total Contract sales invoiced (not including sales tax)} \times 0.0005.$$

- (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 shall invoice Contractor quarterly based on Contract sales reported by Contractor. Contractor is not to remit payment until Contractor receives an invoice from Enterprise Services. Payments must be received within thirty (30) calendar days of the invoice issue date from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the invoice number.
 - (d) Contractor's failure to report accurate total net Contract sales, to submit a timely Contract sales report, or to remit timely payment of the VMF to Enterprise Services, shall be cause for Enterprise Services, at its discretion, to suspend Contractor or terminate this Contract or exercise 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) calendar days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.
- 11.3. ANNUAL CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Contract sales report. Such report shall include, at a minimum: the Fuels/Services sold (including, as applicable, item number or other identifier), per unit quantities sold, items and volumes purchased by Purchaser, shipment/delivery locations by Purchaser, and Contract price. This report must be provided in an electronic format that can be read by Microsoft (MS) Excel. Additional reports may include requests from the State Efficiency and Environment Performance Office (SEEP), which may vary year to year. Other required reports will be designed and requested by the Contract Administrator. Contractor will provide a response within one week and provide the requested data within two weeks.
- 11.4. PURCHASER REPORT. Upon request from Purchaser, Contractor will provide Purchaser a report on their fuel data. This data must be made available to Purchaser within one (1) week of request. For any other data requested from Purchasers, Contractor will provide a response within one week and provide the requested data within two weeks.
- 11.5. QUARTERLY SALES REPORT. Contractor must provide the following information to Enterprise Services in an electronic spreadsheet format within fifteen (15) days following any calendar quarter:
- (a) Volumes and types of fuel(s) delivered (including whether clear or dyed)
 - (b) Purchaser Name
 - (c) Date of Date

- (d) Delivery Location
 - (e) Invoice Number
 - (f) Tank Capacity
 - (g) Average gallons delivered by fuel site
 - (h) Actual fuel(s) delivered
- 11.6. LAB TEST RESULTS. Upon request from Purchaser, Contractor will provide purchaser test results from supplied materials. If Contractor has testing results available, Contractor will provide the results to Purchaser at zero cost. If Contractor testing results are not available, Purchaser will be responsible for the cost of the fuel testing. This data must be made available to Purchaser within one (1) week of request. For any other data request from Purchasers, Contractor will provide a response within one (1) week and provide the requested data within two (2) weeks.
- 11.7. OTHER REQUIRED REPORT(S). All reports required under this contract must be delivered to the Contract Administrator. Contractor may be required to provide a detailed annual contract sales history report that may include but is not limited to products description, per unit quantities sold, contract price, source of in-state feedstock and/or production in an electronic format that can be read by MS Excel. Additional reports may include requests from State Efficiency and Environment Performance (SEEP), which may vary year to year. Other required reports will be designed and requested by the Contract Administrator. Contractor will provide a response within one (1) week and provide the requested data within two (2) weeks.
- 11.8. TANK MONITORING REPORT. If Contractor provides tank monitoring to Purchasers, they may request a tank monitoring report. Contractor will provide such report within five (5) business days.
- 11.9. WASHINGTON SMALL AND/OR DIVERSE BUSINESS INCLUSION
- (a) QUARTERLY REPORT OF SMALL AND DIVERSE BUSINESS INCLUSION. Quarterly, Contractor shall report to Enterprise Services its small and diverse business inclusion results pertaining to this Contract. For this Contract and Contractor's utilization of Washington Small Businesses, Washington State certified diverse businesses, and Certified Veteran-Owned Businesses such report shall detail which, if any, such businesses Contractor has utilized for purposes of this Contract and whether such firm(s) meet the applicable Washington State criteria to be a 'Washington Small Business,' a 'diverse business,' or a Certified Veteran-Owned Business and report the amount paid to each such firm. Contractor shall maintain records supporting such report in accordance with this Contract's records retention requirements.
 - (b) SMALL BUSINESS INCLUSION. Upon Request by Enterprise Services, Contractor shall provide, within thirty (30) days, an Affidavit of Amounts Paid. Such Affidavit of Amounts Paid either shall state, if applicable, that Contractor still maintains its MWBE certification or state that its subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE firm under this Contract. Contractor shall maintain records supporting the Affidavit of Amounts Paid in accordance with this Contract's records retention requirements.

- (c) DIVERSE BUSINESS INCLUSION. Enterprise Services is committed to providing the maximum practicable opportunity for small and diverse businesses to participate in state contracting opportunities. Diverse businesses are defined in WEBS as follows: small business, microbusiness, mini-business, Washington State Office of Minority and Women's Business Enterprises (OMWBE) certified minority owned (MBE) or women owned business (WBE), or Washington Department of Veterans Affairs (DVA) certificated veteran-owned business. Upon request, Contractor shall report to Enterprise Services its spend with certified diverse businesses. Such reports shall include the period covered and sales amount by Purchasing Entity to such businesses.

12. RECORDS RETENTION & AUDITS.

- 12.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes, and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment for any order placed by a Purchaser against this 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.
- 12.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third-party audit, applicable records to ensure that Contractor properly has invoiced Purchasers and that Contractor has paid all applicable vendor management fees to Enterprise Services. 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 Contract or Purchase Orders placed by a Purchaser under this Contract 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 Contract or final payment for any order placed by a Purchaser against this 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.
- 12.3. 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 Contract or Purchase Orders placed thereunder, at a rate of 125% of any such overpayments, found as a result of the examination of Contractor's records; and (b) reimburse Enterprise Services for any underpayment of vendor management fees, at a rate of 125% of such fees found as a result of the examination of 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); *Provided*, however, that, in the event Contractor timely discovers and corrects any Purchaser overpayment or Contractor underpayment of vendor management fees and does so prior to the initiation of any audit, Contractor shall be entitled to reimburse Purchaser or pay to Enterprise Services the actual amount of such Purchaser overpayment or such underpayment of vendor management fees.

13. INSURANCE.

- 13.1. **REQUIRED INSURANCE.** 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 Fuels and/or Services and no additional payment shall be made to Contractor.
- 13.2. **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 Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on Purchaser's behalf in the State of Washington, and only to the extent of claims against Contractor by Purchaser under the Indemnity obligations in this Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

14. CLAIMS.

- 14.1. **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 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 Contractor's acts or omissions under this Contract.
- 14.2. **THIRD-PARTY CLAIMS; GENERAL INDEMNITY.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless 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") to the extent arising out of Contractor's or its successors', agents', or subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons (including death), damages to property, data breach, and/or intellectual property infringement. 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.
- 14.3. **INTELLECTUAL PROPERTY INDEMNITY.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Fuels and/or Services provided, or the use of the Goods and/or Services under this Contract. If

Purchaser's use of Goods and/or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for Purchaser the right to continue using the Goods and/or Services or, after consulting with Purchaser and obtaining Purchaser's consent, replace or modify the Goods and/or Services with substantially similar and functionally equivalent non-infringing Goods and/or Services.

15. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this 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.

16. TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES.

16.1. **TERMINATION.** This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach shall not affect rights or obligations accrued or owed before the effective date of the termination notice.

16.2. **TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW.** Enterprise Services may suspend or terminate this Contract and Purchasers may suspend or terminate applicable Purchase Orders, in whole or in part, at the sole discretion of Enterprise Services or, as applicable, Purchaser, if Enterprise Services or, as applicable, Purchaser reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract or applicable Purchase Order; or (b) that a change in available funds affects Purchaser's ability to pay under the applicable Purchase Order. A change of available funds as used in this section includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, Purchaser shall reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, Purchaser shall have no obligation or liability to Contractor.

16.3. **TERMINATION FOR PUBLIC CONVENIENCE.** Enterprise Services, for public convenience, may terminate this 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) calendar days prior written notice; and *Provided further*, that such termination for

public convenience shall not relieve any Purchaser from payment for Fuels/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.

- 16.4. **PURCHASER OBLIGATIONS – EXPIRATION.** Upon expiration of this Contract, Purchaser shall accept and take delivery of all outstanding and not yet fulfilled Purchase Orders and pay Contractor the price as set out in the Contract. Notwithstanding any provision to the contrary, in no event shall a Purchaser's Purchase Order pursuant to this Contract that is executed prior to expiration of this Contract allow for Contractor to provide Fuels and/or Services more than twelve (12) months beyond the expiration date of the Contract.
- 16.5. **CONTRACTOR OBLIGATIONS – EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods and/or Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to Purchaser all keys, badges, and other materials supplied by Purchaser for the performance of any Purchase Order entered into pursuant to this Contract.
- 16.6. **DEFAULT.** Any of the following events shall constitute cause for Enterprise Services to declare Contractor in default of this Contract:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
 - (b) Contractor fails to timely report quarterly contract sales;
 - (c) Contractor fails to timely pay the vendor management fees when due;
 - (d) Contractor fails to maintain the insurance coverages specified herein or timely provide to Enterprise Services the Certificate of Insurance and updates thereto specified herein; or
 - (e) Contractor breaches any representation or warranty provided herein.
- 16.7. **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this 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) calendar days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Contract. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.
- 16.8. **REMEDIES FOR DEFAULT.**
- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this 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 Fuels 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

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.

- 16.9. **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; *Provided*, however, that nothing contained in this Section shall in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any Fuels or Services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either party's obligations under this Contract, by delivery slips or other documentation is void.
- 16.10. **SUSPENSION/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 Fuels 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 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.

17. PURCHASE ORDER TERMINATION. Purchaser Orders between Eligible Purchasers and Contractor may be terminated as follows:

- (a) Upon the mutual written agreement of the parties to the Purchase Order;
- (b) By the non-breaching party where the breach of the Purchase Order is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in the applicable Purchase Order; or
- (c) As otherwise expressly provided for in the applicable Purchase Order.

Purchase Orders shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate the Purchase Order as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach shall not affect rights or obligations accrued or owed before the effective date of the termination notice.

18. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 18.1. **WASHINGTON'S PUBLIC RECORDS ACT.** Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 18.2. **CONTRACTOR OBLIGATION.** Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to Enterprise Services that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of

Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.

- 18.3. **ENTERPRISE SERVICES' OBLIGATION.** In the event that Enterprise Services receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive, Enterprise Services, prior to disclosure, shall do the following: Enterprise Services' Public Records Officer shall review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, Enterprise Services shall redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where Enterprise Services determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, Enterprise Services shall notify Contractor, at the address provided in the Contract, of the public records disclosure request and identify the date that Enterprise Services intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining Enterprise Services from such disclosure. In the event Contractor fails to timely file a motion for a court order enjoining such disclosure, Enterprise Services shall release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

19. GENERAL PROVISIONS.

- 19.1. **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Contract.
- 19.2. **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.
- 19.3. **NONDISCRIMINATION.**
- (a) **Nondiscrimination Requirement.** During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
 - (b) **Obligation to Cooperate.** Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
 - (c) **Default.** Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into

alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

- (d) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between this Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.

- 19.4. ENTIRE AGREEMENT. This 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.
- 19.5. AMENDMENT OR MODIFICATION. Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 19.6. AUTHORITY. Each party to this 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 Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 19.7. 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 Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 19.8. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of Enterprise Services. Contractor shall not have authorization, express or implied, to bind Enterprise Services to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through Enterprise Services or the State of Washington and Enterprise Services and the State of Washington shall not pay for or otherwise provide such coverage for Contractor and its employees and agents.

- 19.9. **ASSIGNMENT.** Contractor may not assign its rights under this 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 (a) provides written notice to Enterprise Services within thirty (30) calendar days of such event and (b) timely executes Enterprise Services' Assignment, Assumption, and Consent Agreement, Contractor may assign its rights under this 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 Contract notwithstanding any prior assignment of its rights.
- 19.10. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 19.11. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED FUELS AND/OR SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to 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 Contractor's obligations under this Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 19.12. **FEDERAL FUNDS.** To the extent that any Purchaser uses federal funds to purchase Goods and/or Services pursuant to this Contract, such Purchaser shall specify, with its Purchase Order, any applicable requirement or certification that must be satisfied by Contractor at the time the Purchase Order is placed or upon delivery of such Goods and/or Services to Purchaser.
- 19.13. **SEVERABILITY.** If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this 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 Contract.
- 19.14. **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 Contract, nor shall any purported oral modification or rescission of this 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.
- 19.15. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 19.16. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington,

without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.

- 19.17. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this 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.
- 19.18. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this Contract, each party shall bear its own attorneys' fees and costs.
- 19.19. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this 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 Contract. Each party hereto and its counsel has reviewed and revised this 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 Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 19.20. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 19.21. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 19.22. CAPTIONS & HEADINGS. The captions and headings in this 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 Contract nor the meaning of any provisions hereof.
- 19.23. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.
- 19.24. COUNTERPARTS. This 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 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 Contract.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

By: Elena McGrew
Elena McGrew
Its: Enterprise Procurement Manager

Christensen, Inc.
a Washington Corporation

By: ABC
Type Name: Anthony Christensen
Its: Title: President

INCLUDED FUELS

All fuel must meet Washington state fuel quality standards as provided by Washington’s Motor Fuel Quality Act, RCW [19.112](#), as administered by the Washington State Department of Agriculture (WSDA). Current WSDA rules adopt the national standard for the definitions and requirements for standard fuel specifications: Uniform Engine Fuels and Automotive Lubricants Regulation as adopted by the National Conference on Weights and Measures and published in [NIST Handbook 130, 2016 Edition](#). Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation. The national standards are developed by ASTM, the national voluntary standards organization formed to develop standards on the characteristics and performance of fuels and other materials, products, systems and services. Any reference to an ASTM shall mean the most current version of the ASTM fuel standard as adopted by the Washington State Department of Agriculture.

Fuel Product Type	Specification
Gasoline – Unleaded	
Up to 10% ethanol (check with Purchasers to see if they use E15 in their vehicles.)	
Regular 7.8 RVP and 9.0 RVP	ASTM D4814
Midgrade 7.8 RVP and 9.0 RVP	
Premium/Supreme 7.8 RVP and 9.0 RVP	
Ethanol Fuel	
Ethanol E15 (11-15%)	ASTM D5798
Ethanol Flex Fuel (51-85% Ethanol)	
Ultra Low Sulfur Diesel (ULSD) Fuels	
ULSD #1 Clear and Dyed	ASTM D975
ULSD #2 Clear and Dyed	
Biodiesel	
Biodiesel B99 – Clear and Dyed	ASTM D6751
Biodiesels B1-B5 – Clear and Dyed	ASTM D975
Biodiesels B6 - B20 – Clear and Dyed	ASTM D7467
Renewable Diesel (RD)	

Fuel Product Type	Specification
Renewable Diesel R99-Clear and Dyed	ASTM D975
Renewable Gasoline	
Regular	ASTM D4814

A. General Requirements: All fuel must be free from contamination – i.e., free from impurities including water, dirt, harmful oils, fibrous materials, and other petroleum products or contaminants.

B. Additional Requirements for Biodiesel and Renewable Diesel Fuels:

1. Contractor must be able to provide biodiesel and renewable diesel (if available) in any percentage range from 1 to 99 through fuel blending.
2. The biodiesel used for blending must meet ASTM D6751 specifications. The remainder of the fuel must be a diesel or Renewable Diesel fuel that meets ASTM D975 specifications. For these purposes, co-refined diesel is **not** considered biodiesel or Renewable Diesel.
3. Renewable Diesel. RCW 19.112.010 Renewable diesel means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975.
 - a. Must be free of contamination resulting in bacteria or condensation. If bacteria are present, the appropriate treatment shall be applied to the renewal diesel at Contractor's expense.
 - b. Must be filter-cleaned to 20 microns or less.
 - c. If requested by Purchaser, Contractor shall provide a product transfer document (PTD) detailing the type and source of feedstocks producer of the fuel, and carbon intensity ("CI"), if available, for all gallons of renewable diesel sold and delivered to a Purchaser.
 - d. Shall have a CI of 60 or less. Co-mingled feedstock production shall be calculated on a mass balance basis and shall not exceed an overall CI score of 60. The CI scores will conform to the Current Certified CI values provided by the California Air Resources Board in support of low-carbon fuel standards in California and Oregon.
4. All deliveries of Renewable Diesel and/or Bio Diesel will include a product transfer document (PTD) showing feedstock origin, location and producer of the fuel and CI pathway for all gallons sold. Only certified CI fuel pathway codes approved under the California and/or Oregon state low carbon fuel standard (LCFS) program(s) will be accepted and considered in compliance of this contract requirement. If Washington State adopts an LCFS program during the term of this contract, then those corresponding certified pathways would also be accepted. Co-mingled feedstock production will show gallons sold of each certified pathway and feedstock origin clearly on the PTD in order to verify compliance and allow calculation of lifecycle greenhouse gas emissions of fuel purchased. A temporary fuel pathway code may be referenced if the producer

is in the active process of getting feedstock production pathways certified through California and/or Oregon LCFS programs.

- a. Feed-stocks will not include palm oil due to CI concerns.
5. If third party verification determines that CI documentation or feedstock/batch production exceeded five percent total volume in excess of a CI score of 60, or feedstock production claims were inaccurate or not in compliance with specifications outlined, the Contractor will be liable for damages as outlined in standard terms and conditions of this Contract.
6. Biodiesel fuels:
- a. Must be produced by a BQ-9000 certified facility.
 - b. Must be manufactured from at least fifty-one percent (51%) Washington state feedstock and/or biodiesel produced in Washington State. RCW 43.19.646
 - c. Must be free of contamination resulting in bacteria or condensation. If bacteria are present, the appropriate treatment shall be applied to the biodiesel at Contractor's expense.
 - d. Must be filter-cleaned to 5 microns or less.
 - e. Must be less than two (2) months old (measured from date of manufacture) at the time of delivery to Purchaser.
 - f. If requested by Purchaser, Contractor shall provide a PTD detailing the type and source feedstock producer of the fuel and CI, if available, for all gallons of biodiesel sold and delivered to a Purchaser.
 - g. Feed-stocks will not include palm oil due to CI concerns.
 - h. Must have a CI of 60 or less. Co-mingled feedstock production shall be calculated on a mass balance basis and shall not exceed an overall CI score of 60. The CI scores will conform to the Current Certified CI values provided by the California Air Resources Board in support of low-carbon fuel standards in California and Oregon.
 - i. All fuel information provided for the fuel sold will be subject to third party verification at the request of the Purchaser at any time. Purchasers of the fuel will be responsible for verification costs.

C. Renewable Gasoline Requirements:

- a. Must have a minimum octane rating of 87, which shall be determined using the R+M/2 method
- b. No palm or palm derived feedstock's (PFADs, palm waste, etc.) may be used in production of Renewable Gasoline sold under this contract. De minimis amounts of palm from previous batch co-production acceptable. Upon request within five business days, producers will provide documentation of feedstock inputs (traceable to point of origin) and batch production to verify feedstock requirements including disclosure of information related to production of fuel batches not sold under this contract, as needed.
- c. All deliveries of Renewable Gasoline will include a PTD showing feedstock origin, location and producer of the fuel and CI pathway for all gallons sold. Only certified CI

fuel pathway codes approved under the California and/or Oregon state LCFS program(s) will be accepted and considered in compliance of this contract requirement. A temporary fuel pathway code may be referenced if the producer is in the active process of getting feedstock production pathways certified through California and/or Oregon LCFS programs. If Washington State adopts an LCFS program with pathways during the term of this contract, then those corresponding certified pathways would also be accepted. Co-mingled feedstock production will show gallons sold of each certified pathway and feedstock origin clearly on the PTD in order to verify compliance and allow calculation of lifecycle greenhouse gas emissions of fuel purchased.

- d. All Renewable Gasoline products will have a CI of 80 or less as defined by California and/or Oregon LCFS certified or approved temporary pathways. Co-mingled feedstock production will be calculated on a mass balance basis, contain EPA approved isobutanol/isooctane, and will not exceed an overall CI score of 80.
- e. All PTD's provided with fuel sold will be subject to third party verification at the request of the fuel purchaser at any time. End purchasers of the fuel will be responsible for verification costs. Five percent of total fuel volume sold under this contract may not exceed a mass balanced LCFS certified CI score of 80.

Carbon Intensity Reporting for Biodiesel and Renewable Diesel. Certified CI fuel pathway codes approved under the California and/or Oregon State low carbon fuel standard (LCFS) program(s) will be accepted and considered in compliance with reporting requirements under this Contract. A temporary fuel pathway code may be referenced if the producer is in the active process of having feedstock production pathways certified through California and/or Oregon LCFS programs. If Washington State adopts an LCFS program during the term of this Contract then those corresponding certified pathways will be the required documentation.

PRICES

Northwest 1 King and Snohomish Counties			
Renewable Diesel			
Fuel Type	Rack Locations	OPIs Rate Description	OPIS Low +/- (\$)
Diesel ULSD #1 and 2 Clear /Dyed	Seattle	OPIS Gross Ultra Low Sulfur Distillate Prices (No. 1 and 2 Clear /Dyed, Low Rack)	0.000
Biodiesel 99% clear/dyed	Portland	OPIS Gross Wholesale B99 SME Biodiesel Prices" (w/o Rin, LOW RACK)	0.450
B20/R80 blend	Portland (ULSD)	Sum of 80% of renewable rate and 20% of biodiesel 99% rate in that respective region	0.090
Renewable Diesel	Seattle (ULSD)	OPIS Gross Ultra Low Sulfur Distillate Prices (No.2, Low Rack)	0.000
Range of Miles			Cost of delivery (\$)
drop fee (for all miles)			675.00
66-98			100.00
99-131			100.00
132 +			100.00

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this 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, products/completed operations, 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 \$5,000,000 per occurrence and \$5,000,000 general aggregate. Explosion, Collapse, & Underground Damage (XCU) coverage shall be included. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - 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, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **TRANSPORTATION POLLUTION LIABILITY INSURANCE.** Contractor shall provide transportation pollution liability insurance in an amount not less than \$20,000,000 per occurrence and \$40,000,000 aggregate.
 - e. **CONTRACTOR'S POLLUTION LIABILITY INSURANCE.** Pollution liability insurance coverage with a combined single limit per occurrence of not be less than \$5,000,000, to include, without limitation, loading and unloading of all Fuel Products. Such insurance shall provide coverage for bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and costs and expenses incurred in the investigation, defense or settlement of claims. Such coverage shall provide coverage for both on-site and off-site clean-up costs and cover gradual and sudden pollution.
 - f. **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 Contract, with limits of not less than \$5,000,000 per accident, with a 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. If pollutants are to be transported, MCS 90 endorsement is required. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.

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 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.** Commercial General Liability, Commercial Automobile Liability, Transportation Pollution Liability, and Contractor's Pollution Liability Insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds for full coverage and policy limits 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 Contract, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this 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 Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be sent via email to Enterprise Services at the email address set forth below:

Email: shapoor.naveed@des.wa.gov

Note: For Email notice, the Email Subject line must state:

**Contract Insurance Certificate – Contract No. 08721
– Fuels: Gasoline, Diesel, and Renewables**

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 Contract number stated on the cover of this Contract.
9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract

FTA CERTIFICATIONS FOR FUEL

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.

- (a) Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.
- (b) Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD.

- (a) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- (b) Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- (c) Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO THIRD PARTY CONTRACT RECORDS.

- (a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of

making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- (b) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (c) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (d) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (e) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (f) Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (g) FTA does not require the inclusion of these requirements in subcontracts.

4. **CHANGES TO FEDERAL REQUIREMENTS.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

5. **TERMINATION.**

- (a) Termination for Convenience. The (Recipient) may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in the Government's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If Contractor has any property in its possession belonging to the (Recipient), Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- (b) Termination for Default. If Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which the Contractor is in default. Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- (c) Opportunity to Cure. The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- (d) Waiver of Remedies for any Breach. In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

6. CIVIL RIGHTS.

- (a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 102, section 202 of the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 2132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

- i. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- ii. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- iii. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- 7. DISADVANTAGED BUSINESS ENTERPRISES. The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and USDOT's official interpretations (i.e., Questions & Answers) apply to this Contract. As such, the requirements of this Contract are to make affirmative efforts to solicit DBEs, provide information on who submitted a Bid or quote and to report DBE participation. No preference will be included in the evaluation of Bids/Proposals, no minimum level of DBE participation shall be required as a Condition of Award and Bids/Proposals may not be rejected or considered non-responsive on that basis.
- 8. ADA Access. Contractor shall comply with the requirements of 49 CFR FTA C 4710.1 as applicable to this Contract. Equal access and the opportunity should be given to individuals with disabilities to fully participate in or benefit from the fuels, services, facilities, privileges, advantages, or accommodations.

9. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.
10. **DEBARMENT AND SUSPENSION.** This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:
- The certification in this clause is a material representation of fact relied upon by Enterprise Services. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Enterprise Services, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
11. **BUY AMERICA.** Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7.
12. **RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION.**
- (a) **Disputes -** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.
 - (b) **Performance During Dispute.** Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.
 - (c) **Claims for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

- (d) Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.
- (e) Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. LOBBYING. 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.]. Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:


- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, Christensen, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.


Signature of Contractor's Authorized Official
TRAVIS PAULSON
VICE PRESIDENT Name and Title of Contractor's Authorized Official
7-10-24 Date

14. CLEAN AIR.

- (a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. CLEAN WATER.

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

16. CARGO PREFERENCE - USE OF UNITED STATES-FLAG VESSELS. Contractor agrees to:

- (a) Use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
 - (b) Furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
 - (c) Include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
17. **FLY AMERICA REQUIREMENTS.** Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
18. **ENERGY CONSERVATION.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.