



STATEWIDE CONTRACT

No. 16122

**VESSEL REMOVAL, DISPOSAL, OR SALVAGE SERVICES
FOR
DERELICT VESSELS**

CATEGORIES:

Category A – Low Risk Removal up to 35'

Category B – Low Risk Removal & Disposal, up to 35'

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

TROWBRIDGE LLC

Dated April 1, 2023

STATEWIDE CONTRACT

No. 16122

VESSEL REMOVAL, DISPOSAL, AND/OR SALVAGE SERVICES

FOR

DERELICT VESSELS

CATEGORIES A, B

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 Trowbridge LLC, a Washington Limited Liability Company (“Contractor”) and is dated and effective as of April 1, 2023.

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. Certain Washington state agencies (primarily, the Washington Department of Natural Resources) need professional derelict vessel removal, disposal, and/or salvage services to address derelict vessels located in or upon public owned waters and/or property. Accordingly, Enterprise Services, on behalf of the State of Washington, as part of a competitive governmental procurement, issued Competitive Solicitation No. 16122 dated January 19, 2023. The Competitive Solicitation was structured to meet purchaser needs and designed to result in multiple Contract awards, by designated contract categories, to provide cost-effective and efficient procurement solutions for eligible purchasers to purchase professional derelict vessel removal, disposal, and/or salvage services. In addition, Enterprise Services structured the Competitive Solicitation to address state procurement priorities pertaining to qualified Washington Small Businesses and Certified Veteran-Owned Businesses.
- C. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder for the above referenced category(ies).
- D. 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.
- E. The purpose of this Contract is to enable eligible purchasers to purchase the Services for professional vessel removal, disposal, and/or salvage 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 initial term of this Contract is thirty-six (36) months, commencing April 1, 2023, and ending March 31, 2026; *Provided* however, that if Contractor is not in default, Enterprise Services may extend the term of the Master Contract, by written amendment, for up to thirty-six (36) additional months.
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 (COLLEGES).** Any the following institutions of higher education in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
 - 2.3. **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., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.
3. **SCOPE – INCLUDED SERVICES AND PRICE.**
 - 3.1. **CONTRACT SCOPE.** Pursuant to this Contract, Contractor is authorized to provide only those Services set forth in *Exhibit A – Included Services* for the respective Contract Category(ies). Contractor shall not represent to any Purchaser under this Contract that Contractor has contractual authority to provide any services beyond those set forth in *Exhibit A – Included Services*.
 - (a) **Services.** For purposes of this Contract, “Services” means all services of any nature ordered by Purchaser pursuant to this Contract and as identified in a Purchaser’s work request.
 - (b) **Specifications.** Where applicable, specifications for Services are detailed in this Contract and the specific Purchaser’s work request.
 - 3.2. **CONTRACT PRICE.** Derelict vessel removal, disposal, and/or salvage services depend on the particular circumstances pertaining to the vessel at issue. Such circumstances, in significant

measure, are not capable of meaningful advance description – e.g., vessel size, age, condition, contents, location, time of year, weather, and available funding. Accordingly, pursuant to the Competitive Solicitation and this Contract, eligible Purchasers will propose work requests, consistent with this Contract, for specific derelict vessel removal, disposal, and/or salvage services and solicit pricing from awarded Contractors for the specific Service request detailed in the Purchaser work request. Contractor timely shall provide pricing for such work requests.

- (a) Contract Design. The parties understand and acknowledge that the need for the Contract Services is episodic, but often time sensitive due to specific circumstances (e.g., vessel danger to people, property, environment). The parties further understand and acknowledge that the underlying competitive solicitation that resulted in the multiple Contract awards was designed to provide eligible Purchasers with competitive pricing for the Contract Services. Accordingly, as a procurement integrity matter, it is essential that Contractor both timely provide proposed Contract pricing for Purchaser work requests and that such pricing be independent and competitive.
- (b) Work Request Awards. Purchaser will evaluate Contractor pricing and award work requests consistent with this Contract.

- 3.3. ADDITIONAL SOLICITATION & CONTRACT AWARDS. Depending on States need for the Services, Enterprise Services, at its discretion, reserves the right, during the term of this Contract, to solicit and award contracts for the same or similar Services.
- 3.4. STATE'S ABILITY TO MODIFY SCOPE OF CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the 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.
- 3.5. ECONOMIC ADJUSTMENT. Beginning twelve (12) months after the effective date of this Contract and for every annual anniversary thereafter, the prices set forth in *Exhibit B – Prices* shall be adjusted, based upon the percent changes (whether up or down) in the United States Department of Labor, Bureau of Labor and Statistics (BLS) WPU 454101 indices, for the most recent year. Economic adjustment will lag one (1) calendar quarter past the Contract commencement date to allow for publication of BLS data. All calculations for the index shall be based upon the latest version of data published as of April each year. Prices shall be adjusted in June. If an index is recoded (i.e., the recoded index is a direct substitute for the prior index according to the BLS), this Contract will use the recoded index, as applicable. If an index becomes unavailable, DES shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available will be used. The economic adjustment shall be calculated as follows:

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

- 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 Services are performed pursuant to this Contract. If, at the time of any such Services, Contractor cannot

make such representations and warranties, Contractor shall not perform such Services 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. 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.
- 4.7. 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.
- 4.8. WASHINGTON SMALL BUSINESS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor qualifies as a Washington Small Business as defined and set forth in Contractor's Bidder's Certification.
- 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 offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or work 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 Services or suggesting that such 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 Goods 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 this Contract.
- 5. SAFETY; SECURITY.** Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

- 5.1. REGULATORY REQUIREMENTS/SAFETY. Services supplied by Contractor shall meet all OSHA and other safety-related federal, state, local, and/or tribal regulatory requirements applicable to the Services.
- 5.2. ADDITIONAL SERVICE REQUIREMENTS. As applicable for the Contract Category(ies) and specific work request, Contractor shall satisfy the following:
- (a) TOWING. Contractor shall meet all requirements set forth in Title 46 CFR, Part 15 for Towing Assistance. Unless otherwise specified in the work request, Purchasers require a dead-ship tow plan to be approved by the Coast Guard in accordance with the Puget Sound Harbor Safety Committee for vessels over 50-feet, unless the Coast Guard deems the plan unnecessary. Contractor is responsible to obtain a tow plan and provide Purchaser with an approved copy at least one (1) business day prior to the tow. The plan is located on the Puget Sound Harbor Safety Committee's website under the Safety Plan link on the left side of the page (<http://pshsc.org/about>). This site will have the most update version of the plan.
 - (b) DEMOLITION. Contractor is responsible for any demolition-related permits.
 - (c) GROUNDED VESSELS – FOR CATEGORIES A & C: If the vessel is on the bottom or grounded/beached, Contractor may need a Hydraulic Project Approval (HPA) from Washington Department of Fish & Wildlife. Contractor should check with Purchaser to determine an HPA has been obtained. If Purchaser has not obtained an HPA, Contractor may be required to obtain an HPA.
 - (d) ASBESTOS. Contractors must follow all the requirements set forth in [WAC 296-62-07701](#) through [WAC 296-62-07753](#).
 - (i) Contractor is responsible for permits related to hazardous materials handling & disposal including (but not limited to) the Clean Air Agency permits for demolition.
 - (ii) Contractor is responsible to comply with the Clean Air Agency rules.
 - (iii) *For Categories C, D, & E:* At a minimum, for vessels that are larger than 35' it is presumed that asbestos-containing material (ACM) may be present. Accordingly, Contractor is required to arrange for an Asbestos Hazardous Emergency Response Act (AHERA) Good Faith Asbestos Survey. The inspection must be conducted by an AHERA certified inspector and the lab results processed at a National Voluntary Laboratory Accreditation Program (NVLAP) laboratory. Contractor must submit test results to the Purchaser. Any asbestos removal must be conducted by an asbestos worker certified by the Washington State Department of Labor and Industries.
 - (1) Asbestos Testing: Contractor shall include asbestos testing costs in its bid.

(iv) Asbestos Abatement: Unless otherwise specified in the work request, for any needed asbestos abatement activity, Purchaser will allow for abatement at cost + 15% and Contractor shall submit an itemized list of such costs (with the invoice) for Purchaser's review and approval.

(e) COMMUNICATIONS OF HAZARDS TO EMPLOYEES. Contractors must comply with hazards communications to employees as set forth in WAC 296-62-07721.

- 5.3. 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.
- 5.4. ACCIDENT AND INJURY REPORTING. If Contractor, its agents, employees, or subcontractors are present at Purchaser's premises, Contractor promptly will 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 in any Purchaser investigation of incidents.
- 5.5. ON SITE REQUIREMENTS. While on Purchaser's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, safety, and other security requirements and not interfere with Purchaser's operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access Purchaser's premises will be adequately trained and at all times comply with Purchaser's requirements.
- 5.6. DOCUMENTATION, REPORT, AND RECEIPTS. Contractor shall provide purchaser with a written report detailing the work that was completed and including copies of sampling forms, laboratory reports, manifests, receipts, and any other pertinent materials, if requested by the Purchaser's designated representative, within ten (10) business days following completion of the pick-up, transport, and disposal of any collected materials.
- 5.7. MATERIAL IDENTIFICATION. Contractor shall be responsible for identifying hazardous and non-hazardous materials including sampling and analysis by a laboratory licensed and certified by the Washington Department of Ecology. Procedures for identifying these materials must be documented and defensible with local, State, and Federal regulations (e.g., HAZCAT or Laboratory Analytical Test Results). Identification documentation shall be submitted to the Purchaser for each project.
- 5.8. MATERIAL ANALYSIS. Upon completion of laboratory analysis (if required), Contractor shall provide a method of approach to include the recommended transportation and disposal method. A firm price for transport and disposal shall be included in the method of approach.
- 5.9. AUTHORIZED SIGNATURES. Contractor shall prepare and sign any required biohazardous disposal manifests and/or shipping papers. Disposal of all material shall be consistent with all applicable Federal, State, and local laws and regulations. The disposal manifests and/or shipping papers shall also be signed by an authorized Purchaser representative, and the Purchaser shall provide Contractor with a list of authorized signatories.

- 5.10. TRANSPORTATION AND DISPOSAL. Once Contractor has taken control of all materials and containers, Contractor shall be responsible for the transport, temporary storage, and disposal of the material in full compliance with all applicable regulations. Contractor shall also replace any filled containers with empty ones, where requested by Purchaser.

6. SUBCONTRACTORS.

- 6.1. 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).
- 6.2. REPORTING. If Contractor is required to report to Purchaser and/or Enterprise Services, such report(s) will 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.
- 6.3. 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 will pay such subcontractor directly.

7. USING THE CONTRACT – PURCHASER WORK REQUESTS.

- 7.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order Goods 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 work request. When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "work request"). All work requests must reference the Contract number. The terms of this Contract shall apply to any work request and, in the event of any conflict, the terms of this Contract shall prevail. Contractor must provide Purchasers a lump-sum, firm-fixed price for work requests and provide the cost breakdown based on the rates and charges set forth in Exhibit B. 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.
- 7.2. WORK ORDER CHANGES. Unless otherwise specified in the work request, changes, if any, to awarded Purchaser work requests will be addressed as follows:
- (a) UNFORESEEN PHYSICAL CONDITIONS.

- (i) Notice Requirement for Concealed or Unknown Conditions: If Contractor encounters conditions at the vessel which are subsurface or otherwise concealed physical conditions that differ materially from those stated in Purchaser's work request, or unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in derelict vessel removal and salvage activities pertaining to the Services identified in Purchaser's work request, then Contractor promptly shall provide written notice to Purchaser and in no event later than seven (7) days after Contractor first observes such conditions. Conditions shall not be disturbed prior to such notice to Purchaser and Purchaser's opportunity to review and respond.
- (ii) Adjustment to Purchaser's work request Performance Period and/or Compensation: If, in Purchaser's reasonable judgment, conditions differ materially and cause an unexpected change in Contractor's cost to perform the Services set forth in Purchaser's work request in a timely manner, Contractor may be entitled to an equitable adjustment in the work request performance time period or the work request Compensation, or both, provided that Contractor timely makes a request for equitable adjustment as provided below.

7.3. INSPECTION AND APPROVAL OF SERVICES. Services performed under this Contract and a Purchaser work request are subject to Purchaser's reasonable inspection, testing, and approval. Purchaser reserves the right to reject and refuse acceptance of Services that are not in accordance with this Contract and Purchaser's work request. If there are any apparent defects in the Services at the time of performance, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to reperform, at Contractor's expense, any or all rejected Services or, at Purchaser's option, Purchaser may note any such inadequacy, decline acceptance, and deduct the cost of such rejected Services from final payment. Payment for any Services under such work request shall not be deemed acceptance.

8. PREVAILING WAGES. This Contract is subject to Washington's Prevailing Wage on Public Works Act (RCW 39.12). Accordingly, for work pursuant to this Contract, Contractor (including any subcontractors), unless exempt, shall pay all workers employed in the performance of any part of the work in accordance with RCW 39.12 and the rules promulgated by the Washington State Department of Labor and Industries.

8.1. WAGE RATES. Contractor, and any subcontractor or other person doing any portion of the work covered by this Contract, shall not pay any laborer, worker, or mechanic less than the applicable and most current prevailing hourly wage rates and fringe benefits for said worker's classification to all laborers workers or mechanics who perform any work pursuant to any resulting contract, in conformance with the scope or work description of the Industrial Statistician of the Washington State Department of Labor and Industries.

Contractor shall have sole responsibility to ascertain the applicable prevailing rate of wage for such classification, as set forth by the State of Washington for the County in which the work is performed. The applicable prevailing wage rates are set forth on the website for the Washington State Department of Labor and Industries. Prevailing wage rates are updated twice a year, on the first business day in February and August, and take effect thirty (30) days after publication.

- 8.2. STATEMENT OF INTENT TO PAY PREVAILING WAGES. Before commencing any work under this Contract, Contractor (and all subcontractors) shall file with the Washington State Department of Labor and Industries, for approval, a statement, under oath, certifying its Intent to Pay Prevailing Wages. Contractor also shall provide a copy of the Intent to Pay Prevailing Wages to Enterprise Services.
- 8.3. INVOICES & CONTRACT PAYMENTS. Contractor understands and agrees that each invoice for payment submitted to Enterprise Services shall state that prevailing wages have been paid in accordance with the pre-filed Statement(s) of Intent, as approved. Copies of the Intent to Pay Prevailing Wages shall be posted on the work site with the address and telephone number of the Industrial Statistician of the Washington State Department of Labor and Industries where a complaint or inquiry regarding prevailing wages may be made.
- 8.4. AFFIDAVIT OF WAGES PAID. Upon completion of the work under this Contract, Contractor (and each subcontractor) shall file with the Washington State Department of Labor and Industries the approved Affidavit of Wages Paid. Enterprise Services shall condition final payment to Contractor on the submittal of such Affidavit of Wages Paid.
- 8.5. LABOR & INDUSTRIES FEES. Contractor shall pay to the Washington State Department of Labor and Industries any applicable fees for the Statement of Intent and/or Affidavit of Wages Paid that are to be submitted to the Washington State Department of Labor and Industries for certification.
- 8.6. PAYROLL RECORDS. Contractor shall retain payroll records pertaining to work performed for this Contract for three (3) years following expiration or termination of this Contract and, upon request, provide certified copies of such payroll records to Enterprise Services.

9. INVOICING & PAYMENT.

- 9.1. CONTRACTOR INVOICE. Contractor shall submit properly itemized invoices to Purchaser's designated invoicing contact for Services delivered under this Contract and the awarded work request. Such invoices shall itemize the following:
 - (a) Contract No. 16122;
 - (b) Applicable Purchaser work request number;
 - (c) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
 - (d) Contractor's Federal Tax Identification Number;
 - (e) Date(s) of performance for Services specified in Purchaser's work request;
 - (f) Applicable Services;
 - (g) Invoice amount to include lump-sum, firm-fixed cost of the work request and the cost breakdown of the rates and charges based on Exhibit B; and

(h) Payment terms, including any available prompt payment discounts.

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

- 9.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchaser. Purchaser's obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Services. 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 will not be considered late if a check or warrant is mailed within the time specified.
- 9.3. **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.
- 9.4. **ADVANCE PAYMENT PROHIBITED.** Except as authorized by law, Contractor shall not request or receive advance payment for any Services furnished by Contractor pursuant to this Contract and Purchaser's work request.
- 9.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 9.6. **TAXES/FEEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract and Purchaser's work request. 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 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: Kevin McMichael
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-7914
Email: kevin.mcmichael@des.wa.gov

Trowbridge LLC

Attn: Frank Ford
Trowbridge LLC
4601 Shilshole Ave., NW Suite T
Seattle, WA 98107
Tel: (206) 931-3673
Email: frank@trowbridgeinnovations.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 and any awarded Purchaser work request(s).
- 10.3. LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

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

Trowbridge LLC

Attn: Frank Ford
Trowbridge LLC
4601 Shilshole Ave., NW Suite T
Seattle, WA 98107
Email: frank@trowbridgeinnovations.com

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

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) Statewide Contract Sales Reporting System. Contractor shall report quarterly Contract sales in Enterprise Services' Statewide Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Bidder Profile.
 - (b) Data. Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon

request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of the 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 ENDING	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 1.5 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:

$$\text{Amount owed to Enterprise Services} = \text{Total Contract sales invoiced (not including sales tax)} \times .015.$$

- (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on Contract sales reported by Contractor. Contractor is not to remit payment until Contractor receives an invoice from Enterprise Services. Contractor’s VMF payment to Enterprise Services must reference this Contract number, the year and quarter for which the VMF is being remitted, and Contractor’s name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor’s failure to report accurate total net Contract sales, to submit a timely Statewide Contract Sales Report, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services 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 Services provided, Services purchased by Purchaser, applicable awarded work request(s), and Contract/work request price. This report must be provided in an electronic format that can be read by Microsoft (MS) Excel. Such report is due within thirty (30) calendar days of the annual anniversary of the effective date of this Contract.

12. RECORDS RETENTION & AUDITS.

12.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract and awarded Purchaser work requests 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 awarded Purchaser work request pursuant to 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 awarded Purchaser work requests 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 awarded Purchaser work request pursuant to 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 awarded Purchaser work requests 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 x 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 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 will 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, even if not attributable to negligence by Contractor or its agents.
- 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”) arising out of Contractor’s or its successors’, agents’, or subcontractors’ negligence, other tortious fault, or intentional misconduct under this Contract; *Provided*, however, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of Enterprise Services or Purchaser. 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.

15. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Contract and awarded Purchaser work request(s) 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 will 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 work requests, 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 work request(s); or (b) that a change in available funds affects Purchaser's ability to pay under the applicable work request(s). 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 will reimburse Contractor for Services 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 will 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 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 pay Contractor, pursuant to this Contract, the relevant portion of the compensation set forth in the applicable work request(s). Notwithstanding any provision to the contrary, in no event shall a Purchaser’s work request pursuant to this Contract that is executed prior to expiration of this Contract allow for Contractor to provide 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 Services provided 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, if any, supplied by Purchaser for the performance of any work request 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 Contract sales;
 - (c) Contractor fails to timely pay the vendor management fees when due; or
 - (d) 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 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 will in any way exclude or limit: (a) a party’s liability for all damages arising out of that party’s intentional acts or

omissions; or (b) the operation of any Services warranty provided in this Contract. Any limitation of either party's obligations under this Contract, by 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 provide to Purchasers a complete and accurate accounting of the Services that it has performed and the current status of its operations under the applicable work request(s) and Purchasers shall inspect, accept, and pay for the same in accordance with this Contract and the applicable work request(s). Unless directed by Enterprise Services to the contrary, Contractor shall not perform any Services after notice of suspension or termination inconsistent therewith.
- 16.11. **PURCHASER WORK REQUESTS.** Work requests 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 the applicable Work request; and (c) as otherwise expressly provided for in the applicable work request. Work requests 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 Work requests as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

17. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 17.1. **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.
- 17.2. **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.
- 17.3. **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, will do the following: Enterprise Services' Public Records Officer will 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 will 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 will 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 will 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.

18. GENERAL PROVISIONS.

- 18.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Contract.
- 18.2. 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.
- 18.3. 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.
- 18.4. 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.
- 18.5. 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.
- 18.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 18.7. 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 will not pay for or otherwise provide such coverage for Contractor and its employees and agents.
- 18.8. 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.

- 18.9. **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.
- 18.10. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which 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 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.
- 18.11. **FEDERAL FUNDS.** To the extent that any Purchaser uses federal funds to purchase Services pursuant to this Contract, such Purchaser shall specify, with its Work request, any applicable requirement or certification that must be satisfied by Contractor.
- 18.12. **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.
- 18.13. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this 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.
- 18.14. **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.
- 18.15. **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.
- 18.16. **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.

- 18.17. 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.
- 18.18. 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.
- 18.19. 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.
- 18.20. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 18.21. 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.
- 18.22. 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.
- 18.23. 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

TROWBRIDGE LLC,
a Washington Limited Liability Company

By: *Elena McGrew*
 Type Name Elena McGrew

By: Frank Ford
 Type Name

F. La Ford

Its: Title Statewide Enterprise Procurement Manager

Its: Title CEO

INCLUDED SERVICES

Category A – Low Risk Removal up to 35’ – Removal of vessels up to 35’, Marine debris, floating docks or buoys. Object is floating, soft ground, or sunk in the intertidal and needs only minor patching (less than an hour of work) to raise & float.

Category B – Low Risk Removal & Disposal, up to 35’ – Disposal of vessels up to 35’, Marine debris, floating docks or buoys. Object is....and needs haul to landfill or deconstruct (removal of engine and fuel tanks) and dispose.

INCLUDED PRICES FOR SERVICES

Part A. Please provide mark-up percentage your company will charge above direct costs paid out for all of the below factors. Some factors might be a direct pass through from what your company pays, in these circumstances please put in 0%.

For use of a subcontractor in any of the five (5) categories you must provide your percent markup for the costs to perform the services, by a subcontractor. (Left blank will be considered as there is no additional markup.)

Subcontractor percent markup above costs	<u>15</u> %
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Add percent markup above cost for any supplies and materials for any of the five (5) categories you plan to bid. (Left blank will be considered as there is no additional markup.)

Supplies/materials percent markup above costs	<u>15</u> %
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Add percent markup above cost for any equipment rentals for any of the five (5) categories you plan to bid. (Left blank will be considered as there is no additional markup.)

Equipment rentals percent markup above costs	<u>10</u> %
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For asbestos abatement/removal in any of the five (5) categories you must provide your percent markup for the costs to perform the services, whether subcontracted or performed internally. (Left blank will be considered there is no additional markup.)

Percent markup above costs	<u>15</u> %
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Part B. This Statewide Contract is subject to prevailing wages per RCW 39.12 (Prevailing Wages on Public Works) and RCW 49.28 (Hours of Labor) as amended and supplemented. For Prevailing Wage positions, Bidder must enter percent markup above prevailing wage. Bidder must enter a 0% if no percentage is charged. If [Department of Labor and Industries \(LNI\) Prevailing Wages](#) apply, hourly labor rates should be expressed as a percent of LNI prevailing wage (PW) for each applicable job classification (Bidder % x PW). Bidder’s percent bid will always be at least 100% (100% * PW = PW). An example of Electrician (Journeyman) is:

Submitted Bid: 268%

PW: \$59.85

Maximum Charge Rate = 2.68 * \$59.85 = \$160.40

Bidder must complete all columns in table below.

Any columns left blank may be deemed nonresponsive and will not continue further in the process.

Key Job Function (See definitions below)	Hourly Rate (NTE)	Indicate Categories you are bidding (A, B, C, D, E)
Site Supervisor	\$160	A, B, C
Administrative Support	\$114	A, B, C
Prevailing Wage Labor Rates: (Enter a percentage to reflect the markup over prevailing wage in the space for job class/role)	Percent Markup	Indicate Categories you are bidding (A, B, C, D, E)
Vessel Operator	100%	A, B, C
Deckhand	100%	A, B, C
Truck Driver	100%	A, B, C
Heavy Equipment Operator	100%	A, B, C

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Statewide Contract (“Contract”), Contractor shall possess and maintain in full force and effect, at Contractor’s sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY / MARINE GENERAL LIABILITY INSURANCE.** Commercial general liability (“CGL”) or marine general liability (“MGL”) 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 \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition. MGL insurance shall have no exclusions for non-owned watercraft.
 - 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. **PROTECTION AND INDEMNITY INSURANCE (WHEN APPLICABLE).** If, as part of its Services for a Purchaser work request, Contractor is utilizing an owned or chartered vessel, Contractor will provide protection and indemnity insurance, including hull coverage, collision liability, and tower’s liability per American Institute Hull Clauses (September 29, 2009) (or equivalent) for any such vessel(s). This insurance will cover all claims with respect to injuries or damages to persons or property, with limits of liability not less than \$1,000,000.
 - e. **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 \$2,000,000 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 00 01 or an equivalent. If pollutants are to be transported, MCS 90 and CA 9948 (in transit pollution risks coverage) endorsements are required unless in-transit pollution risk is covered under a pollution liability insurance policy. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.

- f. LONGSHORE AND HARBOR WORKER'S INSURANCE. Certain Purchaser work request Services may require insurance coverage for Longshore and harbor workers other than seaman as provided in the Longshore and Harbor Worker's Compensation Act, 33 U.S.C. § 901 *et seq.* ("Act"). Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with the Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.
- g. MERCHANT MARINE ACT OF 1920 ("JONES ACT"). Certain Purchaser work request Services may require insurance coverage for seaman injured during employment resulting from negligence of the owner, master or fellow crew members as provided in 46 U.S.C. § 688 ("Act"). Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.
- h. VESSEL OWNER POLLUTION LIABILITY INSURANCE (*WHEN APPLICABLE*). If, as part of its Services for a Purchaser work request, Contractor is providing a vessel, Contractor will provide vessel owner pollution liability insurance covering clean-up obligations mandated by local and national laws, orders, rules and regulations and covering liability for damages, cleanup, and restoration costs with limits of at least \$1,000,000 per incident.
- i. ENVIRONMENTAL IMPAIRMENT AND CONTRACTOR'S POLLUTION LIABILITY INSURANCE (*AS APPLICABLE*). Insurance coverage for losses caused by pollution conditions that arise from Contractor's operations under this Contract to perform Purchaser work request Services. Such coverage, with limits as specified below, shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. Coverage limits shall be as follows:
 - *Purchaser work request for Services involving the removal of a single vessel:* Coverage in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - *Purchaser work request for Services involving the removal of multiple vessels for Services in Contract Category C or D:* Coverage in the amount of not less than \$1,000,000 per occurrence and \$5,000,000 aggregate.
- j. POLLUTION LIABILITY INSURANCE – *FOR DISPOSAL SITE OPERATOR (WHEN APPLICABLE)*. If Purchaser's work request Services include disposal of any hazardous or non-hazardous materials, Contractor must furnish to Purchaser evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the disposal site operator accepting such hazardous or non-hazardous materials. Coverage certified to Purchaser must be maintained in

minimum amounts of \$1,000,000 per loss, with an aggregate of at least \$5,000,000.

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, and Pollution Liability Insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the 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) calendar 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 delivered to Enterprise Services by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as Enterprise Services may specify in writing:

US Mail: Contracts & Procurement – Statewide Contract Insurance Certificate
Statewide Contract No. 16122 – Derelict Vessel and Marine Salvage
Attn: Kevin McMichael
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411

Email: DESContractsTeamCeder@des.wa.gov

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

**Contract Insurance Certificate – Statewide Contract No. 16122 –
Derelict Vessel and Marine Salvage**

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) calendar 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.