



STATEWIDE CONTRACT

No. 17422

PROCESS SERVER SERVICES

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

Delivery Pullman

Dated July 1, 2023

STATEWIDE CONTRACT

No. 17422

PROCESS SERVER SERVICES

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 Delivery Pullman, a Washington Limited Liability Corporation (“Contractor”) and is dated and effective as of July 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 statewide contracts, for 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 Statewide Contract for Process Server Services that is designed to enable eligible purchasers to procure specific process server services from the awarded Contractor in a cost-effective, efficient manner using the terms and conditions of the Contract.
- C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 17422 dated July 1, 2023.
- D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder.
- 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 the 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 twenty four (24) months, commencing July 1, 2023 and ending June 30, 2025; *Provided*, however, that if Contractor is not in default and if, by June 1, 2025, in Enterprise Services’ reasonable judgment, Contractor satisfactorily has met the performance-based goals for contract extension, **by Contractor request (60 days prior to the end of the initial twenty-four months)**, Enterprise Services shall extend the term of this Contract, by written amendment, for up to thirty-six (36) additional months. Maximum term end date is June 30, 2028. 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
<p style="text-align: center;">Successful Serves</p>	<p>Contractor timely serves documents given by customer to the entity being served, within the exceptional service categories:</p> <ul style="list-style-type: none"> • Urgent Service requested by Purchaser when a serve situation must be completed within 8 hours of notification to the Contractor. This service also will result in return of contractor’s affidavit and/or declaration of service within 5 business days. • Expedited Service requested by Purchaser when a serve situation must be attempted and/or completed within 8 to 24 hours of notification to the Contractor. This service also will result in return of Contractor’s affidavit and/or declaration of service within 5 business days. • Standby Service requested by Purchaser requires the Process Server to <u>wait</u> for an individual and is different than the “best time frame” when a window of time is necessary in order to complete a service. The expectations of Standby Service are that the Contractor is required to wait and the return of affidavit and/or declaration of service are the same as the Primary (Standard) Service. <i>Example:</i> When Standby Service is added to the Primary (Standard) Service, the expectation is to return Contractor’s affidavit and/or declaration of service to the Customer within 10 business days. • Rush Service is when the Purchaser’s office has given the Contractor written instructions that document packet must be served within a five (5) day period. Service of document packet within 5 days after the Contractor has received written authorization; includes, at a minimum, two (2) attempts (day/evening). Contact the Purchaser’s office prior to the five (5) day period for further instructions if service not obtained. Confirmation of completed service is required by email within the five (5) day period. This service also will result in return of contractor’s affidavit and/or declaration of service within 10 business days. This service is NOT available for use by all Agencies or Divisions. Please contact your Process Service Coordinator for guidelines or approvals. <p>Contractor is required to maintain an averaged Successful Service rate of 65% per month. This will be calculated by dividing the total number of items invoiced, by the number of successful serves.</p> <ul style="list-style-type: none"> • Successful Serves*: The percentage of successful serves is the total of serves that have been successfully served given that the server received a valid address. Inadequate serves (are serves in which an address is either a P.O. Box or an address where the client is no longer a resident at) will not be considered towards the successful serve rate.

	<p><i>Calculation of Service Rate Example:</i></p> <table border="1"> <thead> <tr> <th colspan="2">Invoice for Month A</th> </tr> </thead> <tbody> <tr> <td>Invoiced Items</td> <td>74</td> </tr> <tr> <td>Successful Serves*</td> <td>57</td> </tr> <tr> <td>% of Successful Serves (successful serves divided by Total Number of Invoiced Serves)</td> <td>77%</td> </tr> </tbody> </table>	Invoice for Month A		Invoiced Items	74	Successful Serves*	57	% of Successful Serves (successful serves divided by Total Number of Invoiced Serves)	77%
Invoice for Month A									
Invoiced Items	74								
Successful Serves*	57								
% of Successful Serves (successful serves divided by Total Number of Invoiced Serves)	77%								
Insurance Endorsements:	Contractor timely provides 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 at § 4.</i>								
Vendor Management Fee:	Contractor timely remits to Enterprise Service, with no less than a 75% on time rate over the contract term, the applicable Vendor Management Fee (VMF). <i>Note: Contractor must pay the VMF within thirty (30) calendar 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.</i>								
Contract Sales Reports:	Contractor timely provides to Enterprise Services, with no less than a 75% on time rate over the contract term, the required Contract quarterly sales reports. <i>Note: Contractor must provide the quarterly sales reports to Enterprise Services within thirty (30) calendar 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.</i>								

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 sell and provide only those Services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices for Goods/Services*. Contractor shall not represent to any Purchaser under this Contract that Contractor has contractual authority to sell or provide any Services beyond those set forth in *Exhibit A – Included Goods/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 the Purchase Order.
 - (b) Specifications. Where applicable, specifications for Services are detailed in this Contract and the Purchase Order. Unless otherwise specified in the Purchase Order, all 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 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. ECONOMIC ADJUSTMENT. The Contract Prices set forth herein are firm and fixed for one year from the effective date of this Statewide Contract. Beginning twelve (12) months after the effective date of this Statewide Contract and for every annual anniversary thereafter, the prices set forth in *Exhibit B – Prices* shall be adjusted, based upon the percent changes in the United States Department of Labor, Bureau of Labor and Statistics (BLS) indices described below, for the most recent year. All calculations for the index shall be based upon the latest version of data published as of one year of the effective date each year. Prices shall be adjusted on January 1st. If an index is recoded (i.e., the recoded index is a direct substitute for the prior index according to the BLS), this Statewide Contract will use the recoded index, as applicable. If an index becomes unavailable, Enterprise Services shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available will be used. The economic adjustment shall be calculated with index code **492, Couriers and Messengers**, as follows:
- $$\text{New Price} = \text{Old Price} \times (\text{Current Period Index} / \text{Base PCU492}).$$
- 3.4. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Contract, Contractor guarantees to provide the Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services* (subject to economic adjustment as set forth herein).

3.5. **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 Goods/Services that meet specified state procurement priorities as set forth in the Competitive Solicitation.

3.6. **STAFFING.**

- Contractor's and their employees/agents performing under this contract are not employees/agents of the State of Washington.
- Awarded Contractors shall not hold themselves out as nor claim to be officers or employees
- Contract will provide a criminal background check for employees used in the performance of serving process at the Contractor's expense, if requested by a Purchaser.
- In-State: All process servers and support staff providing the services as described herein on behalf of the Contractor will meet all State of Washington qualifications, registrations, certifications and any other training as required by law.
- Out of State: All process servers and support staff providing the services as described herein on behalf of the Contractor will meet all State of Washington qualifications, registrations, certifications and any other training as required by law within the respective state(s) in which they perform the service of process.

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.

- Contractor represents and warrants that no principal or employee that is a party to an active support enforcement case will be used to serve process on their personal child support enforcement case.

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. CERTIFIED VETERAN-OWNED BUSINESS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor qualifies as a Certified Veteran-Owned 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 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 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 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.

5. QUALITY; WARRANTY; REMEDIES.

- 5.1. **SERVICES WARRANTY.** Contractor warrants that: (a) Services will be performed in a timely, efficient, and professional manner; (b) all Contractor personnel assigned to perform Services will have the necessary skill and training; and (c) Services will be performed in a manner consistent with the standard of care in the industry ("Services Warranty"). The Services Warranty will survive for a period of twelve (12) months after the date when Services are completed ("Services Warranty Period").
- 5.2. **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.

6. **SAFETY; SECURITY.** Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

- 6.1. 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.

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) 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.
- 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 will pay such subcontractor directly.

8. USING THE CONTRACT – PURCHASES.

- 8.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order 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.
- 8.2. CUSTOMER SERVICE. Contractor shall respond to new customer requests for Services within forty eight (48) hours. Contractor shall respond to current customer requests in regards to process service updates within twenty four (24) hours.

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. Such invoices shall itemize the following:

- (a) Contract No. 17422;
- (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 Services;
- (f) Invoice amount; and
- (g) Payment terms, including any available prompt payment discounts.

Contractor’s invoices for payment shall reflect accurate Contract 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. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Prices for 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.

- In the event that Contractor fails to meet the established Performance Standard, Contractor will self-assess a penalty equal to the percentage difference deducted from the monthly invoice. Percentages should be calculated in whole percentages or with no more than one (1) decimal (e.g., 2% or 2.6% are acceptable; not acceptable would be 2.62% or 2.59857483%.) These penalties will be assessed monthly, itemized and deducted from the appropriate monthly total.

Example of calculation of Self-Assessed Penalty:

Example of Self-Assessed Penalty	
Successful Serves* Rate for Month A	63%
Performance Standard	65%
Difference	2%
Monthly Invoice	\$3,400.00
Self-assessed Penalty (2% of \$3,400.00)	\$86.00

- Successful Service*: As described in Section 1, Term, Performance Metrics Table, Successful Serves.

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.
- 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/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 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, Purchaser 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: Julia Bang
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 490-9459
Email: julia.bang@des.wa.gov

Contractor

Attn: Frank Contreras
Delivery Pullman
PO Box 1443
Pullman, WA 99163
Tel: (509) 336-9901
Email: info@deliverypullman.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.
- 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

Contractor

Attn: Frank Contreras
 Delivery Pullman
 PO Box 1443
 Pullman, WA 99163
 Email: info@deliverypullman.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) Contract Sales Reporting System. Contractor shall report quarterly Contract sales in Enterprise Services’ 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 1.25 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:

Amount owed to Enterprise Services = Total Contract sales invoiced (not including sales tax) x .0125.

- (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 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 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. Such report is due within thirty (30) calendar days of the annual anniversary of the effective date of this Contract.

11.4. WASHINGTON SMALL AND/OR DIVERSE BUSINESS INCLUSION.

- 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.

- **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.
- **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 it's 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 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 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 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 will 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 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 Goods/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 S 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 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 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 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; (b) the operation of any Goods 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 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.
- 16.11. **PURCHASER PURCHASE ORDERS.** Purchaser Orders 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 Purchase Order; and (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 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 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 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 Services to Purchaser.
- 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.

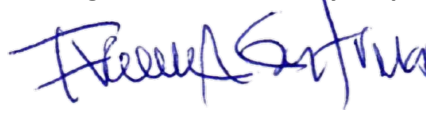
EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

By: 

 Tim Foitzik
 Its: Procurement Supervisor

DELIVERY PULLMAN,
a Washington Limited Liability Corporation

By: 

 Frank Contreras
 Its: Owner

INCLUDED SERVICES
PROCESS SERVER SERVICES

1. Definitions. Terms commonly used in the performance of Process Service, including additional definitions may be found in Chapter 43.19 RCW and WAC 236-48-003. All terms contained herein will be read consistently with those definitions.
2. Expectation of Service. All expectations of service are reflective in Section 1, Term, Performance Requirements Table.
 - a. All services must be pre-approved by Purchaser in written format (e.g. fax, letter or email).
 - b. Contractor will leave a copy of served documents at recipient's Usual Mailing Address (defined as a place of residence and not a US Postal Service Post Office Box or place of employment) with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and with written authorization from Purchaser, Contractor will mail a copy of documents by first class mail, postage prepaid, to the person to be served at their usual mailing address.
 - i. Usual Mailing Address if requested must be documented on returned declaration.
 - c. Communication. Contractor will reply to all Purchaser communications (typically phone calls and/or emails) within 24 hours.
 - d. Contractor will return documents un-served to Purchaser. Contractor understands that the new address may or may not lead to a successful serve.
 - e. Multiple addresses. If Purchaser provides two addresses, and the first address is a bad address and the documents are successfully served at the second address, the Contractor may bill for the successful serve and one unsuccessful serve. If there are two addresses and both addresses are bad, the Contractor may bill the unsuccessful serve rate for each address.
 - f. Recall/Withdrawal of Service Documents. Recall or withdrawal of documents by Purchaser after Contractor has initiated one or more attempts in the 45 day period will be reimbursed by the Purchaser.
 - i. Contractor must return field notes and any other documentation of attempts to serve with the documents within five (5) days of recall or withdrawal.
 - ii. Recall or withdrawal of documents by Purchaser prior to Contractor initiating serve attempts will be returned at no-charge to Purchaser when:
 1. Conflict of Interest between Contractor and person being served exists;
 2. Serve place process server in jeopardy;
 3. Information received from Purchaser prevents Contractor from serving documents;
 4. Initial serve is clearly out of Contractor's territory;
 5. Address is a jail, prison, institution, Indian reservation or any address that prohibits access to the process server.
 - iii. Serve Documentation (Field Notes). Field notes must contain detailed information regarding dates, times, conditions, etc. Field notes must be:
 1. Legible and defensible in court of law;
 2. Forwarded to purchaser within ten (10) business days

3. Detailed in description and activities involved with each attempt to serve;
 4. Documented with observations of surroundings at home address (such as License plate numbers, physical description of person conversed with and summary of conversation.);
 5. Returned with affidavit or declaration for substitute service.
 6. Field notes can be requested at a later date for successful serves.
 7. If individual served is not as described on paperwork received from the purchaser, provide description of individual served to include name and physical description, if possible.
3. Service of Process. Contractor has 45 calendar days to attempt service.
- a. Successful Serve. A successful serve represents one or more document package(s) at the same time to one or more individuals at the same address. If multiple documents are to be served at the same address at the same time, the Contractor will serve multiple documents for one charge.
 - b. Unsuccessful Serve. At conclusion of 45-day serve period, Contractor is required to destroy un-served documents and provide certification of destruction.
 - c. Unserved Documents. Contractor must provide certification of destruction of documents for any un-served documents upon request of Purchaser. Contractor may destroy un-served documents after the first attempt when:
 - i. Address is obviously vacant;
 - ii. Occupant is not the individual described in the document packet;
 - iii. Service of documents represents an unsafe or hazardous situation placing process server in jeopardy.
 - d. Invoice. The invoice will be paid when the certification of destruction of documents has been returned to Purchaser along with attached field notes that contain documentation and descriptions related to non-service within the 45-day period. Payment of the invoice shall occur when Purchaser receives certification of destruction, and field notes that contain detailed information explaining the prevention of service. Failure to submit all items at the same time will result in a delay of payment, and is not subject to the late payment clause.
 - e. Contractor will provide all required documents to the purchaser within ten (10) business days after confirmation of a completed successful service. Invoice will not be paid, until all of the documents are received complete. Failure to provide valid, correct, court worthy documents may delay payment and is not subject to any late penalty fees.
 - f. Contractor is expected to begin processing service within three (3) business days of receipt of documents unless exceptional service is required. If this time allowance cannot be met, the Contractor must contact the Purchaser for instruction.
 - g. Successful Contractors shall not represent themselves as employees of the state, nor will they make any claim of right, privilege or benefit which would accrue to civil service employees under RCW Chapter 41.06.
4. Performance Measures.
- a. Contractor is required to maintain an averaged Successful Service rate of 65% per month. Please see Section 1, Term, Performance Requirements Table.
 - b. In the event Contractor fails to meet the established performance standard, Contractor will self-assess a penalty equal to the percentage difference deducted from the monthly

invoice. Percentages should be calculated in whole percentages or with no more than one decimal. These penalties will be assessed monthly, itemized and deducted from the appropriate monthly total.

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**DELIVERY PULLMAN - PRICES FOR SERVICES
PROCESS SERVER SERVICES**

County	Standard Rate	Expedited Rate	Urgent Rate	Rush Rate	Standby Rate
	completed within 45 days	completed within 8-24 hrs	completed within 8hrs	completed within 5 days	Agreeable time in 15 min increments
Adams	NOT AWARDED				
Asotin	NOT AWARDED				
Benton	NOT AWARDED				
Chelan	NOT AWARDED				
Clallam	NOT AWARDED				
Clark	NOT AWARDED				
Columbia	NOT AWARDED				
Cowlitz	NOT AWARDED				
Douglas	NOT AWARDED				
Ferry	NOT AWARDED				
Franklin	NOT AWARDED				
Garfield	NOT AWARDED				
Grant	NOT AWARDED				
Grays Harbor	NOT AWARDED				
Island	NOT AWARDED				
Jefferson	NOT AWARDED				
King	NOT AWARDED				
Kitsap	NOT AWARDED				
Kittitas	NOT AWARDED				
Klickitat	NOT AWARDED				
Lewis	NOT AWARDED				
Lincoln	NOT AWARDED				
Mason	NOT AWARDED				
Okanogan	NOT AWARDED				
Pacific	NOT AWARDED				
Pend Oreille	NOT AWARDED				
Pierce	NOT AWARDED				
San Juan	NOT AWARDED				
Skagit	NOT AWARDED				
Skamania	NOT AWARDED				
Snohomish	NOT AWARDED				
Spokane	NOT AWARDED				
Stevens	NOT AWARDED				
Thurston	NOT AWARDED				
Wahkiakum	NOT AWARDED				
Walla Walla	NOT AWARDED				
Whatcom	NOT AWARDED				
Whitman	\$4.99	\$5.99	\$7.99	\$4.99	\$4.99
Yakima	NOT AWARDED				
All US States	NOT AWARDED				
Additional Charges					
Additional Fee for serves past 10 miles					\$0.50

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 \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.
 - c. **PERSONAL AUTOMOBILE LIABILITY INSURANCE.** Personal automobile liability coverage (and, if necessary, commercial umbrella liability insurance) with limits no less than \$250,000 per occurrence, \$500,000 aggregate, and \$100,000 property damage.
 - d. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - e. **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.

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 sent via email to Enterprise Services, and shall be sent to the email address set forth below:

Email: DESContractsTeamApple@des.wa.gov

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

**Contract Insurance Certificate – Statewide Contract No. 17422
Process Server Services**

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.

* * * END OF INSURANCE REQUIREMENTS * * *