



MASTER CONTRACT

No. 11021

**SNOW & ICE CONTROL PRODUCTS
[HIGHWAYS & ROADWAYS]**

CATEGORY/REGIONS:

**CATEGORY 1: CORROSION INHIBITED LIQUID MAGNESIUM CHLORIDE –
REGIONS 1, 2, 4, 5, AND 6.**

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

GMCO CORPORATION

Dated August 1, 2022

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REGIONS 1, 2, 4, 5, AND 6.**

This Master Contract (“Master Contract”) is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and GMCO Corporation, a Colorado corporation (“Contractor”) and is dated and effective as of August 1, 2022.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods 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 master 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. The State of Washington has responsibility for snow and ice prevention and removal pertaining to state highways and roadways. Accordingly, Washington state agencies purchase snow and ice control products to perform their mission. This Master Contract is designed to provide a competitively solicited and awarded procurement solution for such agencies and other eligible purchasers, including, for example, political subdivisions (e.g., counties, cities, towns), to efficiently and cost-effectively purchase snow and ice control products.
- C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 11021 dated May 19, 2022. The Competitive Solicitation was structured to meet purchaser needs and designed to result in regional awards of Master Contracts, by geographic area and by competitively solicited product categories, in which the State of Washington was divided into six geographic regions. In addition, within each geographic region, Enterprise Services structured the Competitive Solicitation to address state procurement priorities pertaining to qualified Washington Small Businesses and Certified Veteran-Owned Businesses. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder for the following category and regions: Category 1: Corrosion Inhibited Liquid Magnesium Chloride – Regions 1, 2, 4, 5, and 6.
- D. Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington.

E. The purpose of this Master Contract is to enable eligible purchasers to purchase the Goods and/or Services as set forth herein.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. TERM. The term of this Master Contract is twenty-four (24) months, commencing August 1, 2022 and ending August 1, 2024; *Provided*, however, that if Contractor is not in default and if, by January 31, 2024, in Enterprise Services’ reasonable judgment, Contractor satisfactorily has met the performance-based goals for contract extension, Enterprise Services shall extend the term of this Master Contract, by written amendment, for up to forty-eight (48) additional months. Such extension amendment shall be on the same terms and conditions as set forth in this Master Contract. To earn the performance-based Master Contract term extension, Contractor must achieve the following performance-based metrics:

PERFORMANCE METRIC	PERFORMANCE REQUIREMENT FOR CONTRACT EXTENSION
Contractor’s Snow & Ice Control Products:	Provide to Purchasers, without exception, snow and ice control products that comply with the latest Clear Roads Qualified Products List (QPL) with the exception that all liquid deicer shall pass through a 20 MESH screen at zero (0) degrees Fahrenheit.
Insurance Endorsements:	Timely provide to Enterprise Services at the designated address, without exception, annual insurance endorsements for the insurance coverages required by this Master Contract. See <i>Exhibit C – Insurance Requirements</i> at § 4.
Vendor Management Fee:	Timely remit to Enterprise Service, with no less than a 75% on time rate over the contract term, the applicable Vendor Management Fee (VMF). <i>Note:</i> Contractor must pay the VMF within thirty (30) 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 Master Contract term, Contractor will not be eligible for a performance-based extension.
Master Contract Sales Reports:	Timely provide to Enterprise Services, with no less than a 75% on time rate over the contract term, the required Master Contract quarterly sales reports. <i>Note:</i> 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 Master Contract term, Contractor will not be eligible for a performance-based extension.

2. ELIGIBLE PURCHASERS. This Master 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. MCOA PARTIES. Any of the following types of entities that have executed a Master Contract Usage Agreement with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Master Contract, Contractor is authorized to sell and provide only those categories of Snow and Ice Control Products set forth in *Exhibit A – Included Goods* for the prices set forth in *Exhibit B – Prices; Provided*, however, that Enterprise Services, by mutual agreement and amendment to this Master Contract, may authorize Contractor to substitute new, improved, or updated products listed on the Clear Roads Qualified Products List QPL for a product currently listed in this Contract and within the above-referenced category. Substitutions (and substitution product pricing) shall be at the sole discretion of Enterprise Services. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell or provide any Goods beyond those set forth in *Exhibit A – Included Goods*.
 - (a) Goods. For purposes of this Master Contract, “Goods” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased by Purchaser pursuant to this Master Contract and as identified in the Purchase Order.
 - (b) Specifications. Where applicable, specifications for Goods and/or Services are detailed in this Master Contract and the Purchase Order. Unless otherwise specified in the Purchase Order, all Goods and/or Services provided shall be new and unused of the latest model or design.

3.2. STATE’S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the Goods and/or Services included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) calendar days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Master Contract.

ECONOMIC ADJUSTMENT. Beginning twelve (12) months after the effective date of this Master 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) indices described below, 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 June 1 each year. Prices shall be adjusted on July 1 of each year. If an index is recoded (i.e., the recoded index is a direct substitute for the prior index according to the BLS), this Master Contract will use the recoded index, as applicable. If an index becomes unavailable, Enterprise Services shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available will be used. The economic adjustment shall be calculated as follows:

New Price = Old Price x [sum of all PPI values(Current Period Index/Base Period Index*percentage)].

The “Current Period Index” is the average of the most recent twelve months of BLS Index values, and the “Base Period Index” is the average of the twelve months of BLS Index values prior to the Current Period Index.

PPI values, including those that are preliminary at the time of the request, will be utilized in the analysis.

Category	PPI Name	PPI Code	CATEGORY 1: CORROSION INHIBITED LIQUID MAGNESIUM CHLORIDE
Rock Salt	PPI Commodity data for Chemicals and allied products-Rock salt, not seasonally adjusted	WPU06130271	
Chemical Manufacturing	PPI industry data for Other basic inorganic chemical manufacturing-Primary products, not seasonally adjusted	PCU325180325180P	38%

Rail Transportation	PPI industry sub-sector data for Rail transportation, not seasonally adjusted	PCU482---482---	29%
Truck Transportation	PPI industry sub-sector data for Truck transportation, not seasonally adjusted	PCU484---484---	33%
Deep Sea Transportation	PPI industry data for Deep sea freight transportation, not seasonally adjusted	PCU483111483111	

Diesel Fuel Surcharge: Contractors may charge a Diesel Fuel Surcharge based on changes in fuel cost from the baseline rate, which will be established on the effective date of the award. The changes in the Diesel Fuel Surcharge are based on the price changes from Oil Price Information Service (OPIS) for Spokane, Washington contract average rack price for ultra-low #2 diesel (USLD #2 Clear) fuel using the report subscribed to and received by Enterprise Services.

The Contract Administrator will verify OPIS pricing on the effective date of the contract (the baseline rate) and the price on the 20th of each month (or nearest business day) thereafter, and adjust the Diesel Fuel Surcharge on the DES contract webpage if applicable to be effective on the first day of the month. This adjustment will be considered an administrative action, not requiring a contract amendment.

Should the price per gallon of diesel fuel change (whether an increase or a decrease) by more than 5% from the baseline rate, this change would be reflected in the Diesel Fuel Surcharge. If the change is less than 5% of the baseline there will not be a Diesel Fuel Surcharge for that month. The fuel price adjustment will be \$0.01 per mile for every \$0.05 change in fuel price and be applied to the established miles between points in the Purchase Order. Mileage will be disclosed on each invoice and may be verified by the Purchaser prior to acceptance of the surcharge.

Example 1: Baseline price of fuel is \$3.00/gallon. OPIS indicates a 5% increase of \$0.15/gallon. Vendor may charge \$0.03/mile. Mileage is 100 miles round trip.

$$\$0.15 \text{ gallon} / \$0.05 = \$0.03 \text{ gallon} \times 100 \text{ miles} = \$3.$$

Contractor will invoice a separate line item indicating diesel fuel surcharge and mileage.

Example 2: Baseline price of fuel is \$3.00/galloon. OPIS indicates a 10% decrease of \$0.30/gallon. Vendor must credit \$0.06/mile. Mileage is 100 miles round trip.

$$\$0.30 \text{ gallon} / \$0.05 = \$0.06 \times 100 \text{ miles} = -\$6.$$

Contractor will invoice a separate line item indicating diesel fuel credit and mileage. If the fuel price returns to the baseline, surcharges may no longer be charged.

- 3.3. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in *Exhibit B – Prices for Goods* (subject to economic adjustment as set forth herein).
- 3.4. MASTER CONTRACT INFORMATION. Enterprise Services shall maintain and provide to eligible Purchasers information regarding this Master 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 Master Contract provide Goods/Services that meet specified state procurement priorities as set forth in the Competitive Solicitation.
4. **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Master Contract and at the time any order is placed pursuant to this Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
 - 4.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that 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 Master Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Master 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 Master Contract and the three (3) year period immediately preceding the award of the Master 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. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Master 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.
- 4.9. 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.
- 4.10. 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 Master Contract, Contractor shall maintain an accurate profile in WEBS.
- 4.11. 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.
- 4.12. MASTER 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 Master Contract with eligible Purchasers and to ensure that those entities that utilize this Master Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor’s Goods and/or Services or suggesting that such Goods and/or Services are the best or only solution to their needs. Accordingly, Contractor 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.
- 4.13. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Master 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.

- 4.14. 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 Master Contract.
- 4.15. 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 Master Contract.
- 4.16. MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned to another contractor (e.g., Master Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services (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 Master Contract for the sixty (60) day period immediately before such transition.
- 4.17. COVID-19 VACCINATION VERIFICATION. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that, Contractor has a current COVID-19 Contractor Vaccination Verification Plan to ensure that Contractor's personnel (including subcontractors) who perform this Master Contract on-site at Washington state agency premises or at the premises of any Purchaser who so requests, unless properly excepted or exempted by the Proclamation, are fully vaccinated for COVID-19 as set forth in the Governor's Proclamation, [Proclamation 21-14 – COVID-19 Vaccination Requirement](#) (dated August 9, 2021) as amended by [Proclamation 21-14.1 – COVID-19 Vaccination Requirement](#) (dated August 20, 2021). Contractor further represents and warrants that Contractor:
- (a) Has reviewed and understands Contractor's obligations as set forth in [Proclamation 21-14 – COVID-19 Vaccination Requirement](#) (dated August 9, 2021), as amended by [Proclamation 21-14.1 – COVID-19 Vaccination Requirement](#) (dated August 20, 2021);
 - (b) Has developed a COVID-19 Vaccination Verification Plan for Contractor's personnel (including subcontractors) that complies with the above-referenced Proclamation;
 - (c) Has obtained a copy or visually observed proof of full vaccination against COVID-19 for Contractor personnel (including subcontractors) who are subject to the vaccination requirement in the above-referenced Proclamation;
 - (d) Complies with the requirements for granting disability and religious accommodations for Contractor personnel (including subcontractors) who are subject to the vaccination requirement in the above-referenced Proclamation;
 - (e) Has operational procedures in place to ensure that any contract activities that occur on-site at Washington state agency premises or at the premises of any Purchaser who so requests (other than only for a short period of time during a given day and where any moments of close proximity to others on-site will be fleeting – e.g., a few minutes for deliveries) that are performed by Contractor personnel (including subcontractors) will be performed by

personnel who are fully vaccinated or properly excepted or exempted as required by the above-referenced Proclamation;

- (f) Has operational procedures in place to enable Contractor personnel (including subcontractors) who perform contract activities on-site at Washington state agency premises or at the premises of any Purchaser who so requests to provide compliance documentation that such personnel are in compliance with the above-referenced Proclamation; and
- (g) Will provide to Enterprise Services or Purchaser, upon request, Contractor's COVID-19 Vaccination Verification Plan and related records, except as prohibited by law, and will cooperate with any investigation or inquiry pertaining to the same.

4.18. CLEAR ROADS QUALIFIED PRODUCT LIST (QPL). Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor shall provide only snow and ice control products that comply with the latest [Clear Roads Qualified Products List \(QPL\)](#) with the exception that all liquid deicer shall pass through a 20 MESH screen at zero (0) degrees Fahrenheit. Contractor further represents and warrants that, during the term of this Contract, Contractor shall maintain approved status on the QPL.

5. QUALITY; WARRANTY; REMEDIES.

5.1. GOODS WARRANTY. Contractor warrants that, for a period of twelve (12) months from the date when the Goods are put into use, or eighteen (18) months after delivery of the Goods, whichever is later ("Goods Warranty Period"), the Goods: (a) are free from defects in design, material, and workmanship; (b) are fit for the intended purposes and appropriate for the specified application(s) (if any); (c) are consistent with recognized industry quality standards; (d) comply with the requirements, specifications, drawings, standards, and descriptions included in this Master Contract; and (e) are produced and delivered in full compliance with applicable law ("Goods Warranty"). For Goods delivered by Contractor and properly stored, Contractor warrants that such Goods carried over from season to season shall meet Clear Roads Qualified Products List (QPL) specifications the following year. In the event such stored Goods do not meet QPL specifications the following year, Contractor shall take all necessary action to bring the Goods back into compliance or replace such Goods with applicable snow and ice control product that meet QPL Specifications; *Provided*, however, that either option shall be at no cost to Purchaser and that Contractor's correction or replacement shall occur within thirty days. Contractor further warrants that it has good and marketable title to the Goods and shall keep Purchaser's property free of liens. If Purchaser receives notice of a lien caused by Contractor, Purchaser may withhold any payment otherwise due Contractor until Contractor submits proof, in a form satisfactory to Purchaser, that all lienable claims have been fully paid or waived.

5.2. GOODS REMEDY. If Goods do not comply with the Goods Warranty or any defects develop during the Goods Warranty Period under normal use, at Purchaser's election, Contractor promptly shall remedy the defect by removing, repairing, correcting, and/or replacing any defective Goods. Contractor's Goods Warranty support shall include, at Contractor's sole expense, all technical support, parts, materials and equipment, and labor, including freight and "in/out" costs required to address the defect. If, in Purchaser's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor shall refund the full amount of any payments that have been made. The rights and remedies of the parties under

this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

- 5.3. **SERVICES WARRANTY.** Contractor warrants that: (a) Services 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").
 - 5.4. **SERVICES REMEDY.** If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at Purchaser's election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to Purchaser or refund the amounts paid for the Services.
 - 5.5. **FAILURE TO REMEDY.** If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from Purchaser, or if an emergency exists rendering it impossible or impractical for Purchaser to have Contractor provide a remedy, Purchaser may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods or Services, in which case Contractor shall reimburse Purchaser for its actual costs or, at Purchaser's option, Purchaser will offset the costs incurred from amounts owing to Contractor.
 - 5.6. **TECHNICAL SUPPORT.** During any applicable warranty period, Contractor shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. Contractor shall maintain a technical support hotline to address breakdowns and safety incidents.
- 6. SAFETY; SECURITY.** Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.
- 6.1. **REGULATORY REQUIREMENTS/SAFETY.** Goods/Services supplied by Contractor shall meet all OSHA and other safety-related federal, state, local, and/or tribal regulatory requirements applicable to the Goods/Services.
 - 6.2. **MATERIAL SAFETY DATA SHEETS.** As applicable, Contractor shall provide Purchaser with all appropriate Material Safety Data Sheets ("MSDS") at the time of delivery of each shipment of Goods which requires such compliance and/or and for materials used by Contractor while performing Services and any updates of the same.
 - 6.3. **CLEAN-UP.** If Contractor, its agents, employees, or subcontractors perform onsite Services, Contractor, at its cost, will remove all excess materials, equipment, packaging, and garbage within the scope of its performance of Services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a Site after completion of work, Purchaser will have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.
 - 6.4. **ACCIDENT AND INJURY REPORTING.** If Contractor, its agents, employees, or subcontractors are present at Purchaser's premises, Contractor promptly 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.

- 6.5. 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.
- 6.6. IT SECURITY POLICIES. Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which will be made available to Contractor upon request.

7. SUBCONTRACTORS.

- 7.1. CONTRACTOR RESPONSIBILITY. Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Master Contract, Contractor shall: (a) incorporate Contractor's responsibilities under this Master 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 Master 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 Master 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 Master 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 MASTER CONTRACT – PURCHASES.

- 8.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order Goods and/or Services from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but including, at a minimum, a field order or 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 Master Contract number. The terms of this

Master Contract shall apply to any Purchase Order and, in the event of any conflict, the terms of this Master Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or any other agreement modify the terms and conditions of this Master Contract.

- (a) The official order date shall be the date of the transmittal to the Contractor when received by the Contractor prior to 2pm. Purchase Orders received after 2pm will be considered as received the next business day.
- (b) Contractor immediately shall notify Purchaser if Contractor is unable to meet the delivery requirements as defined herein. If Purchaser schedules a date outside of the Thirty-Day Delivery requirement identified herein, the order shall be considered late if not received on the scheduled delivery date.
- (c) Purchaser shall provide Contractor with all necessary delivery information when ordering, including but not limited to:
 - Contact Information – i.e., business phone, cell phone, fax number or email
 - Emergency/After-Hours Contract Information
 - Logistical Information – i.e., driving directions, delivery address, driving instructions, receiving times/days, delivery truck type, etc.

8.2. SNOW & ICE CONTROL PRODUCTS DELIVERIES.

- (a) Three-Day Delivery: From November 1 to April 30, Purchasers may specify on the Purchase Order that delivery shall be made within three calendar days from the official order date. Purchasers will indicate on Purchase Order whether Purchaser can accept deliveries during extended business hours. For Three-Day Delivery Orders, deliveries made on or after the 4th calendar day shall be subject to liquidated damages for late delivery.
- (b) Seven-Day Delivery: Purchasers may specify on the Purchase Order that delivery shall be made within seven calendar days from the official order date. For Seven-Day Delivery Orders, deliveries made on or after the 8th calendar date shall be subject to liquidated damages for late delivery.
- (c) Thirty-Day Delivery – Solid Products: Purchaser may specify on the Purchase Order that delivery shall be made within thirty calendar days from the official order date. For Thirty-Day Delivery Orders, deliveries made on or after the 31st calendar day shall be subject to liquidated damages for late delivery.
- (d) For Three-Day Delivery Orders and Seven-Day Delivery Orders, orders over 60 tons per location, a minimum of 60 tons must be delivered within three or seven (respectively) calendar days from the Official Order Date. The balance of the order must be delivered, 60 tons per day, until the order is fulfilled. These deliveries are not subject to liquidated damages from section 8(a) and (b), unless the Contractor fails to deliver the minimum of 60 tons per day before the balance of the order is fulfilled. There may be situations where the three calendar day delivery can be extended, but this is contingent on the Purchaser accepting the extended delivery timeframe. Contractor will work with Purchaser regarding the extended delivery.

- (e) During an emergency event, notwithstanding any provision to the contrary, Contractor shall give priority to WSDOT over MCUA Members if supply is overwhelmed by demand.

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

- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order.
- (b) Deliveries shall occur during Purchaser's normal work hours and within the time period mutually agreed in writing between Purchaser and Contractor. Contractor shall coordinate extended delivery days/hours with Purchaser prior to making deliveries. Contractor is responsibility to ensure that Purchaser is available to accept deliveries. Purchaser may refuse shipment when delivered after normal working hours. Purchaser's acceptance of late delivery shall not constitute a waiver of timely performance for future purchases.
 - For WSDOT facilities, regular business days/hours shall be Monday through Friday, 8am to 4pm (PST), excluding Washington State holidays or extended business hours.
- (c) If requested on the order, Contractor shall provide Purchaser 24-hour advance notification of scheduled delivery. Such delivery notification shall be made during Purchaser's regular business hours.
- (d) Contractor shall ship all Goods and/or Services purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Purchaser's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the Goods and/or Services ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence.
- (e) Contractor may charge a drop shipment fee for each additional stop when there are multiple delivery locations for one truckload. Purchasers may specify multiple delivery locations within the same WSDOT Region.
- (f) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Master Contract shall be identified by the Master Contract number set forth on the cover of this Master Contract and the applicable Purchaser's Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- (g) The Bill of Lading shall include the following information:
 - Date of Delivery (initialed by driver);
 - Purchase Order Number;
 - Snow & Ice Control Product Name;
 - Contractor Name;
 - Delivery Location;

- Total Amount delivered;
- Certified scale ticket or certified flow meter ticket;
- Product Lot number;
- Transport Company information i.e., Name; tank, trailer, or rail car number; and point and date of origin.

8.4. SHIPPING.

(a) Typical truckload volumes are:

PRODUCT TYPE & DESCRIPTION	APPROX. WEIGHT	MINIMUM PER TRUCK LOAD	TYPICAL QUANTITY PER TRUCK LOAD
Solid Bulk	2,000 lbs./Ton	30 Tons	30 Tons
Liquid Bulk	Variable/Ton	5,000 Gallons	6,500 Gallons

(b) Contractor shall package snow and ice control products as follows:

- Liquid products: Packaging shall be for bulk products shipped in tanker trucks in full truckload delivery quantities, unless otherwise specified in the Purchase Order.
- Solid products: Packaging shall be bulk loads in full truckload delivery quantities.
- All products shall be protected from the weather elements and secured in a manner to prevent it from dislodging during transit.

8.5. UNLOADING. Contractor is responsible to unload of snow and ice control products. There shall be no additional cost to the Purchaser for unloading-related activities.

- (a) To avoid unnecessary unloading delays, Purchaser shall provide ready access to delivery site, adequate room for maneuvering, easy access to liquid tank connection, and a clearly identified unloading spot. Average length of trailer truck is 48 feet and end dump trucks may rise 30 feet above ground level. If an unloading site is not adequate for deliveries, Contractor will notify Purchaser.
- (b) For bulk solid products, an end-dump truck is required for delivery at all WSDOT locations unless otherwise stated in the Purchase Order. If the Purchaser requires another type of delivery truck, it must be specified in the Purchase Order. There shall be no additional costs to Purchaser for different types of delivery trucks. Purchaser will identify areas that require a belt loader truck.
- (c) For bulk liquid, Purchaser’s liquid storage tanks will be fitted with a three-inch male pipe cam lock fitting to allow for unloading of product. Contractor shall be responsible for all necessary equipment to transfer liquid chemical products to Purchaser’s storage tanks. Contractor shall visually inspect the discharge valve prior to unloading for the presence of any foreign materials.
- (d) To control foaming during loading, unloading, and agitation of liquid chemical products, an anti-foaming agent will be available during delivery

and unloading from Contractor for use as needed, at no additional charge to Purchaser.

- 8.6. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or Services purchased under this Master Contract are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of Goods and/or Services that are not in accordance with this Master Contract and Purchaser's Purchase Order. If there are any apparent defects in the Goods and/or Services at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Goods and/or Services or, at Purchaser's option, Purchaser may note any such damage on the receiving report, decline acceptance, and deduct the cost of rejected Goods and/or Services from final payment. Payment for any Goods and/or Services under such Purchase Order shall not be deemed acceptance.
- For deliveries to WSDOT, Purchaser must note any product issues at the point of delivery on the Bill of Lading. Purchaser may reject any shipment if problems are noted and immediately halt the unloading process. Purchaser must immediately advise the WSDOT Headquarters Maintenance Operations office of any ordering, delivery, storage, or product quality issues.

8.7. SAMPLING & TESTING FOR COMPLIANCE.

- (a) Purchaser shall have the discretion, on an as delivered basis, to inspect, sample, and test Contractor's product. If Contractor offloads product without giving Purchaser an opportunity for field inspection, sampling or testing, the product may be deemed non-compliant and subjected to total rejection. The sample will be used for testing and/or fingerprinting at Purchaser's expense to ensure product quality.
- (b) Each product type may be tested for conformance to PNS specifications during the year. When a sample is taken for testing it will be taken from the delivered shipment. The sample will be used for testing and/or fingerprinting at Purchaser's expense to ensure product quality.
- (c) When shipping a sample for testing, Purchaser must include the following information:
 - Master Contract No. 11021;
 - Purchase Order Number;
 - Manufacturer or Contractor Name;
 - Name of Product
 - Lot number of Product:
 - Shipping date:
 - Bill of lading number; and
 - Date received, delivery location, quantity of material delivered, and name and phone number of person receiving the load and taking the samples.

Note: WSDOT will use a third-party laboratory; other Purchasers may use a testing laboratory of their choice.

- (d) For liquid products, a one-gallon sample will be taken from the transfer hose in three equal parts. Each part will be compositely mixed with the other parts to make up the one-gallon sample that will be submitted to the laboratory for testing. The sample will be collected during unloading of the delivered product by taking a sample from the first third, second third, and last third of the load. If the trailer or pup has compartments, then three equal samples shall be taken from only one of the compartments to complete the sample.
- (e) For solid products, samples of the materials should be obtained from a complete cross section of the load. The sample should be placed into a clean and dry wide mouth one-gallon container with a screw top lid and sealed with tape as soon as the sample has been taken to avoid exposing the sample unduly to atmospheric moisture. Sample portions shall be taken from the top, center, and bottom of the load in proportion to the cross-section area at that point and well within the stack each time. It is best practice to cut completely through the stack if practicable. Fine material sifts to the bottom. Care should be taken to obtain a complete and representative sample.

8.8. CERTIFICATION OF DELIVERED SNOW & ICE CONTROL PRODUCTS.

- (a) Contractor shall provide with each shipment a certification that all products delivered meet PNS Qualified Product List and specifications as set forth in this Contract.
- (b) Contractor shall provide a Lot (Batch or Control) Number for each shipment. The Lot Number is a specific number assigned to that particular production run of the product being delivered. A Lot Number can be the source of multiple deliveries. The Lot Number shall be legible and identified on delivery documents. The Lot Number must enable Purchaser and Contractor to track delivered products back to its manufacture point, date of manufacture, and specific batch for quality assurance and verification. Failure to have a Lot Number with each shipment is grounds for rejection of the load at time of delivery.
- (c) For liquid products, Contractor shall provide a legible printed ticket from a flow meter or certified weight scale that has been tested and certified through the WSDA Weights and Measures Program on an annual basis. Weight tickets shall be stamped with a Weigh Master Seal. Purchaser may request that the meter (or certified weight scale) be retested and certified again during the delivery year, at no cost to Purchaser if the data is in question.

8.9. ADDITIONAL DELIVERY LOCATIONS. Purchasers may add new delivery locations at any time during the term of this Master Contract; Provided, however, that shall allow Contractor five (5) business days to set-up a new location account and delivery logistics once an order confirmation is received.

8.10. TESTING NEW PNS PRODUCTS. During the term of this Contract, Purchasers reserve the right to purchase other snow and ice control products for testing and evaluation purposes from any Contractor whether on contract or not. Such purchases may result in a maximum

displacement of 10% total volume of contracted items. However, the maximum volume displaced may be increased based on legislative direction. Contractors of displaced products will not be compensated for lost orders, volume, or profit.

9. 80 / 120 VOLUME COMMITMENTS.

- 9.1. PURCHASER RIGHT TO ELECT TO PARTICIPATE. Each Purchaser, by written agreement with Contractor, shall have the right pursuant to this Master Contract to elect to participate in an 80 / 120 Volume Commitment. In such event, Purchaser shall provide Contractor with a 'target volume' representing 100% of Purchaser's estimated need for the stated snow and ice control products. Pursuant to the 80 / 120 Volume Commitment, Purchaser guarantees to Contractor that Purchaser shall pay for 80% of the target volume regardless of whether Purchaser's actual orders reach 80% of the target volume. Similarly, pursuant to the 80 / 120 Volume Commitment, Contractor guarantees to Purchaser that, if requested by Purchaser, Contractor shall deliver to Purchaser up to 120% of the target volume. Target purchases may be adjusted annually by August 31. Adjusted quantities shall be addressed by mutual written agreement.

The current products under the 80/120 volume commitments are: Category 1: Corrosion Inhibited Liquid Magnesium Chloride, Category 2: Corrosion Inhibited Liquid Calcium Chloride, Category 4C: Corrosion Inhibited Solid Sodium Chloride- Grade 2, Category 8A-R: Standard Gradation, Road Salt, and Category 8B: Standard Gradation Road Salt, Insoluble Material.

- 9.2. WSDOT Participation. WSDOT commits to purchasing no less than 80% and Contractor is responsible to supply up to 120% of the target volume. If Contractor supplies the same product to multiple regions, purchase volume may be aggregated to meet the 80% minimum purchase and the 120% maximum supply quantity.

10. INVOICING & PAYMENT.

- 10.1. CONTRACTOR INVOICE. Contractor shall submit properly itemized invoices to Purchaser's designated invoicing contact for Goods and/or Services delivered under this Master Contract. Such invoices shall itemize the following:
- (a) Master Contract No. 11021
 - (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 Goods and/or Services;
 - (f) Unit of measure;
 - (g) Unit price;
 - (h) Total price for units measured;
 - (i) A copy of the bill of lading;
 - (j) Invoice amount; and

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

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

- 10.2. 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 Goods and/or Services. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Prices*, Purchaser's payment is due within thirty (30) calendar days of invoice. Purchaser retains the right of setoff for any amount due or owing to Purchaser. Purchaser may make payments electronically (e.g., ACH payments). Contractor shall provide information necessary to facilitate electronic payments. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 10.3. 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.
- 10.4. ADVANCE PAYMENT PROHIBITED. Except as authorized by law, Contractor shall not request or receive advance payment for any Goods and/or Services furnished by Contractor pursuant to this Master Contract.
- 10.5. 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.
- 10.6. TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased Goods and/or Services. Contractor'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.

11. CONTRACT MANAGEMENT.

- 11.1. CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Master Contract. Enterprise Services' contract administrator shall provide Master Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Master Contract. The parties may change 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: Breann Aggers
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-9416
Email: Breann.aggers@des.wa.gov

Contractor

Attn: Bruce Juelfs
P.O. Box 1480
228 Powerline Road
Rifle, CO 81650
Tel: (970) 541-8834
Email: bjuelfs@gmccorp.com

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

- 11.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Master Contract.
- 11.3. 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: Bruce Juelfs
P.O. Box 1480
228 Powerline Road
Rifle, CO 81650
Email: bjuelfs@gmccorp.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.

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

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

Purchasers specified herein during the term of the Master Contract. If there are no Master Contract sales during the reporting period, Contractor must report zero sales.

- (c) Due dates for Master Contract Sales Reporting. Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines for all Master Contract sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	MASTER 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

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

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

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

- (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 Master 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 Master Contract number, the year and quarter for which the VMF is being remitted, and Contractor’s name as set forth in this Master Contract, if not already included on the face of the check.
- (d) Contractor’s failure to report accurate total net Master Contract sales, to submit a timely Master 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 Master 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 Master Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.
- 12.3. ANNUAL MASTER CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Master Contract sales report. Such report shall include, at a minimum: the Goods/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 Master 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 Master Contract.
- 12.4. MONTHLY CONTRACT ACTIVITY REPORTS. Contractor shall provide monthly sales reports for each delivery location supplied through this Contract. Reports are due by the 15th of the following month. Contractor shall email the report, in Microsoft Excel, to Enterprise Services (Contract Administrator) and the designated Purchaser representative(s) for each Purchaser. Reports are not required during months with zero sales. The report shall include:
- (a) Product Purchased;
 - (b) Delivery Region, Maintenance Area, Specific Location;
 - (c) Delivery Option (Three-Day Delivery; Seven-Day Delivery; Thirty-Day Delivery);
 - (d) Date Ordered;
 - (e) Date and Quantity Delivered;
 - (f) Total Dollar Amount of Sales for the month; and
 - (g) Year to date total volume and dollar amounts;

13. RECORDS RETENTION & AUDITS.

- 13.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect 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 Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 13.2. 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 Master Contract or Purchase Orders placed by a Purchaser under this Master 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 Master Contract or final

payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 13.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Master Contract or 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.

14. INSURANCE.

- 14.1. 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 Goods/Services and no additional payment shall be made to Contractor.
- 14.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. 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 Master 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.

15. CLAIMS.

- 15.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Master Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from Contractor's acts or omissions under this Master Contract, even if not attributable to negligence by Contractor or its agents.
- 15.2. 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 Master 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.

16. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Master Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

17. TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES.

- 17.1. TERMINATION. This Master 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 Master Contract; and (c) as otherwise expressly provided for in this Master Contract. This Master 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 Master 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.

- 17.2. TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW. Enterprise Services may suspend or terminate this Master 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 Master 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.
- 17.3. TERMINATION FOR PUBLIC CONVENIENCE. Enterprise Services, for public convenience, may terminate this Master Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) 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.
- 17.4. PURCHASER OBLIGATIONS – EXPIRATION. Upon expiration of this Master 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 Master Contract. Notwithstanding any provision to the contrary, in no event shall a Purchaser's Purchase Order pursuant to this Master Contract that is executed prior to expiration of this Master Contract allow for Contractor to provide Goods and/or Services more than twelve (12) months beyond the expiration date of the Master Contract.
- 17.5. CONTRACTOR OBLIGATIONS – EXPIRATION OR TERMINATION. Upon expiration or termination of this Master Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods or Services sold hereunder and all provisions of the Master Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Master 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 Master Contract.
- 17.6. DEFAULT. Any of the following events shall constitute cause for Enterprise Services to declare Contractor in default of this Master Contract:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Master 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.

17.7. SUSPENSION & TERMINATION FOR DEFAULT. Enterprise Services may suspend Contractor's operations under this Master Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) calendar days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Contract. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Master Contract, until such obligations have been fulfilled.

17.8. REMEDIES FOR DEFAULT.

- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Contract are in addition to all other available remedies.
- (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasers replacement Goods and/or Services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

17.9. LIQUIDATED DAMAGES FOR DELIVERY DELAYS. The parties understand and acknowledge that snow and ice control products are critical to the State (and other eligible Purchasers') ability to maintain and manage highway and roadway satisfy in a timely and effective manner. The parties also agree and acknowledge that, in the event of delivery delays, it is impossible to calculate applicable damages. Accordingly, and notwithstanding any provision to the contrary, the parties agree that in the event Contractor does not timely deliver the snow and ice control products, Contractor shall pay to Purchaser the amounts set forth herein, not as a penalty, but as a reasonable approximation of actual damages.

- (a) If Contractor fails to deliver the snow and ice control product in the timeframe specified in the Purchase Order, liquidated damages will be assessed as follows:
 - \$500 per day for the 4th calendar day and every following day on a Three-Day Delivery order placement up to 50% of the order value;
 - \$200 per day for the 8th day and every following day on a Seven-Day Delivery order placement up to 50% of the order value;
 - \$100 per day for the 31st day and every day following a Thirty-Day Delivery order placement up to 50% of the order value; and
 - \$100 for delivery made outside normal business hours with an additional \$100 if delivery is more than one hour past regular business hours, not to exceed \$200 per shipment.
- (b) For liquid snow and ice control products delivered outside the specified concentration ranges the following liquidated damages will be assessed;

- Concentration exceeding specification by 1.1% or more (but not below the required concentration limit: \$1,000 per load per delivery location);
 - Concentration below specification limit at 24% to 24.9%: \$1,500 per load per delivery location; and
 - Concentration below specification limit at less than 24%: 100% of the value per load per delivery location.
 - (c) For solid snow and ice control products delivered outside the specified moisture, gradation, and segregation/separation specifications, liquidated damages will be assessed at \$450 per load per delivery location. Permissible variations of 5% will be allowed for each sieve size.
 - (d) For Corrosion inhibited snow and ice control products delivered outside the corrosion specifications, liquidated damages will be assessed at \$750 per load per delivery location. Purchaser may elect to reject shipment at its sole discretion without incurring additional costs. Contractor shall remove any rejected product and contaminated material from Purchaser's site. Purchaser shall determine the amount of material, if any, that has been contaminated by the shipment. Contractor shall replace the rejected product with product that meets specifications. All associated costs for removal and replacement of rejected product and contaminated material shall be at the Contractor's sole expense, including shipping and handling.
- 17.10. 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 Master Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Master Contract. Any limitation of either party's obligations under this Master Contract, by delivery slips or other documentation is void.
- 17.11. 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 Goods and/or Services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Master Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.
- 17.12. 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.

18. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 18.1. WASHINGTON'S PUBLIC RECORDS ACT. Unless statutorily exempt from public disclosure, this Master Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 18.2. CONTRACTOR OBLIGATION. Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to Enterprise Services that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.
- 18.3. ENTERPRISE SERVICES' OBLIGATION. In the event that Enterprise Services receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive, Enterprise Services, prior to disclosure, 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 Master 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.

19. GENERAL PROVISIONS.

- 19.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Contract.
- 19.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Master Contract.
- 19.3. ENTIRE AGREEMENT. This Master Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations,

representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.

- 19.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 19.5. AUTHORITY. Each party to this Master Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Master Contract and that its execution, delivery, and performance of this Master Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 19.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Master Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 19.7. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship is created by this Master Contract. Contractor and its employees or agents performing under this Master 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.
- 19.8. ASSIGNMENT. Contractor may not assign its rights under this Master Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor (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 Master Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Master Contract notwithstanding any prior assignment of its rights.
- 19.9. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Master Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 19.10. 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 Goods and/or Services provided in Washington for the purpose of carrying out Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 19.11. FEDERAL FUNDS. To the extent that any Purchaser uses federal funds to purchase Goods and/or Services pursuant to this Master Contract, such Purchaser shall specify, with its Purchase

Order, any applicable requirement or certification that must be satisfied by Contractor at the time the Purchase Order is placed or upon delivery of such Goods/Services to Purchaser.


- 19.12. SEVERABILITY. If any provision of this Master Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Contract, and to this end the provisions of this Master Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Contract.
- 19.13. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Contract, nor shall any purported oral modification or rescission of this Master Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 19.14. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Contract shall survive and remain in effect following the expiration or termination of this Master Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 19.15. GOVERNING LAW. The validity, construction, performance, and enforcement of this Master Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- 19.16. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Master Contract, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 19.17. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this Master Contract, each party shall bear its own attorneys' fees and costs.
- 19.18. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Master Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Master Contract. Each party hereto and its counsel has reviewed and revised this Master Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Master Contract. Each term and provision of this Master Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 19.19. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Master Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Contract including, without limitation, executing

any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Contract.

- 19.20. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Master Contract in their entirety.
- 19.21. CAPTIONS & HEADINGS. The captions and headings in this Master Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Contract nor the meaning of any provisions hereof.
- 19.22. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Master Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Master Contract or such other ancillary agreement for all purposes.
- 19.23. COUNTERPARTS. This Master Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Master Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Master Contract.

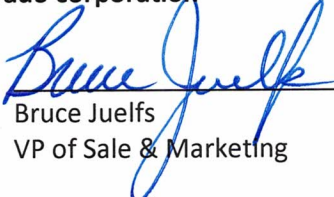
EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

By: 

David Mgebhoff
Its: Strategy Supervisor

GMCO CORPORATION,
a Colorado corporation

By: 

Bruce Juelfs
Its: VP of Sale & Marketing

INCLUDED GOODS

All products shall comply with the latest [Clear Roads Qualified Products List \(QPL\)](#) with the exception that all liquid deicer shall pass through a 20 MESH screen at zero (0) degrees Fahrenheit.

PRICES FOR GOODS

Category 1
Corrosion Inhibited Liquid Magnesium Chloride

Concentration:	30%
Product:	Torch Cl
Drop Shipment:	\$125.00

WSDOT Region 1 Northwest

Order/Delivery Area	3 Days	7 Days
Maintenance Area 1	\$ 243.50	\$ 238.50
Maintenance Area 2	\$ 233.98	\$ 228.98
Maintenance Area 3	\$ 225.33	\$ 220.33
Maintenance Area 4	\$ 219.01	\$ 214.01
Maintenance Area 5	\$ 224.76	\$ 219.76

WSDOT Region 2 North Central

Order/Delivery Area	3 Days	7 Days
Maintenance Area 1	\$ 201.44	\$ 200.44
Maintenance Area 2	\$ 199.64	\$ 198.64
Maintenance Area 3	\$ 200.49	\$ 199.49

WSDOT Region 4 Southwest

Order/Delivery Area	3 Days	7 Days
Maintenance Area 1	\$ 229.33	\$ 224.33
Maintenance Area 2	\$ 215.02	\$ 210.02
Maintenance Area 3	\$ 231.72	\$ 226.72
Maintenance Area 4	\$ 213.20	\$ 208.20

WSDOT Region 5 South Central

Order/Delivery Area	3 Days	7 Days
Maintenance Area 1	\$ 193.43	\$ 192.43
Maintenance Area 2	\$ 189.14	\$ 188.14
Maintenance Area 3	\$ 193.60	\$ 192.60
Maintenance Area 4	\$ 199.42	\$ 198.42

WSDOT Region 6 Eastern

Order/Delivery Area	3 Days	7 Days
Maintenance Area 1	\$ 181.25	\$ 180.25
Maintenance Area 2	\$ 185.00	\$ 184.00
Maintenance Area 3	\$ 186.03	\$ 185.03
Maintenance Area 4	\$ 190.38	\$ 189.38

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, 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. **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. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Contract, with limits of not less than \$5,000,000 per accident, with a combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 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.
 - e. **TRANSPORTATION POLLUTION LIABILITY COVERAGE.** Contractor shall provide transportation pollution liability insurance in an amount not less than \$10,000,000 per occurrence and \$20,000,000 aggregate.

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 Master Contract, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) 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 Master Contract number stated on the cover of this Master 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 – Master Contract Insurance Certificate
Master Contract No. 11021 – Snow& Ice Control Products
Attn: Breann Aggers
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411

Email: Breann.aggers@des.wa.gov

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

**Master Contract Insurance Certificate – Master Contract No. 11021
– Snow & Ice Control Products [HIGHWAYS & ROADWAYS]**

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 Master Contract number stated on the cover of this Master 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 Master Contract.

**CITY OF SPOKANE
SPECIAL TERMS & CONDITIONS**

The following terms and conditions apply only to the City of Spokane, as Purchaser, if such Purchaser utilizes this Master Contract:

1. **STORAGE.** Purchaser intends to have 206,000 gallons in ready inventory at the beginning of a major winter snow and ice storm with a potential re-supply of 60,000 gallons every 48 hours at each site during the storm. Purchaser has onsite storage of 86,000 gallons located at the Northside Satellite, 4101 East Queen Street, Spokane, WA. Contractor shall supply snow and ice control products to the Northside Satellite on a keep full basis. The other 120,000 gallons are to be stored in rail cars on a siding or other site/facility approved by Purchaser.
2. **OFF-SITE STORAGE.** Contractor's off-site storage must be located within the Purchaser's city limits or the western half of the Havana rail yard just north of Sprague and east of Havana. Storage site shall be made readily available to Purchaser's crews and be provided with continuous power to the Purchaser's pumping facility to operate its lighting, heating, and pumping system. The cost for power and readiness shall be included in the unit cost of the snow and ice control products provided.
3. **END OF SEASON INVENTORY.** At the end of the winter season, or approximately March 31, Contractor shall fill Purchaser's storage tanks. Any material left in Contractor's supplied storage shall be returned to Contractor and a credit issued to Purchaser.
4. **DELIVERY.** Normal working hours shall be Sunday through Saturday, excluding City holidays, between the hours of 6am and 2pm or 5pm and 1am unless otherwise requested and approved by Purchaser.
5. **BUSINESS LICENSE REQUIREMENTS.** Contractor shall be responsible for contacting Purchaser's Taxes & Licenses Department at (509) 625-6070 to obtain a business license or receive a determination of exemption in accordance with § 8.01.070 of the Spokane Municipal Code.

Exhibit D-Master Contract Master GMCO signed




1

Final Audit Report

2022-07-28

Created:	2022-07-26
By:	breann aggers (breann.aggers@des.wa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVnDSUYg7QpXgHJLF4FMs3AcX4zhFmelq

"Exhibit D-Master Contract Master GMCO signed 1" History

-  Document created by breann aggers (breann.aggers@des.wa.gov)
2022-07-26 - 3:32:13 PM GMT- IP address: 198.238.242.30
-  Document emailed to David Mgebhoff (david.mgebhoff@des.wa.gov) for signature
2022-07-26 - 3:32:49 PM GMT
-  Email viewed by David Mgebhoff (david.mgebhoff@des.wa.gov)
2022-07-28 - 7:11:57 PM GMT- IP address: 104.47.64.254
-  Document e-signed by David Mgebhoff (david.mgebhoff@des.wa.gov)
Signature Date: 2022-07-28 - 7:15:42 PM GMT - Time Source: server- IP address: 198.238.242.30
-  Agreement completed.
2022-07-28 - 7:15:42 PM GMT