

COOPERATIVE PURCHASING MASTER AGREEMENT

No. 00218

POLICE RADAR/LIDAR SPEED ENFORCEMENT & SPEED ADVISORY SYSTEMS, PARTS, AND ACCESSORIES

For Use by Eligible Purchasing Entities

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

MPH INDUSTRIES, INC.

Dated February 20, 2019

COOPERATIVE PURCHASING MASTER AGREEMENT

No. 00218

POLICE RADAR/LIDAR SPEED ENFORCEMENT & SPEED ADVISORY SYSTEMS, PARTS, AND ACCESSORIES

This Cooperative Purchasing Master Agreement (“Master Agreement”) is made and entered into by and between Enterprise Services acting by and through the State of Washington (“Enterprise Services”) and MPH Industries, Inc., a Kentucky Corporation (“Contractor”) and is dated and effective as of February 20, 2019.

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 services to support Washington state agencies. *See* RCW 39.26.050(1). The Washington State Legislature has authorized Enterprise Services to make these master contracts available, pursuant to agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agency or entity, public benefit nonprofit organizations, or any tribes located in the State of Washington. *See* RCW 39.26.050(1) & (2).
- B. The Washington State Legislature also has authorized Enterprise Services to participate in, sponsor, conduct, or administer certain cooperative purchasing agreements for the procurement of goods or services. *See* RCW 39.26.060(1). One of the approaches that Enterprise Services utilizes to participate in cooperative purchasing agreements with other states is NASPO ValuePoint.
- C. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO). The NASPO ValuePoint purchasing cooperative program is led by state procurement officers from member states. NASPO ValuePoint does not award contracts; rather, it assists states, for an administrative fee, in their collaboration pertaining to solicitations and the resulting master agreements.
- D. Pursuant to the NASPO ValuePoint cooperative purchasing model, a state serves as the ‘lead state’ to conduct a competitive procurement in compliance with that state’s procurement laws and award a master agreement with a contractor for the specified goods or services. States (including the District of Columbia and the organized territories of the United States), including the lead state, then may participate in that master agreement by executing a Participating Addendum. Until a Participating Addendum is executed by the applicable state (a ‘participating entity’), no agency or other eligible organization (a ‘purchasing entity’) may purchase pursuant to the cooperative purchasing master agreement. Under Washington law, at the time of solicitation, states may provide supplemental substantive terms and conditions to inform the competitive procurement. In addition, pursuant to their Participating Addendum, states may require certain administrative terms and conditions (e.g., a vendor management fee for sales within the state, state registration and reporting). Contractor, however, has no obligation to condition execution of a Participating Addendum on substantive terms and conditions that were not competitively procured.

- E. Enterprise Services, as part of a cooperative purchasing competitive governmental procurement, with administrative support from NASPO ValuePoint, issued Request For Proposal (RFP) No. 00218 dated November 19, 2018, 2018 regarding Police Radar/Lidar Speed Enforcement & Speed Advisory Systems, Parts, and Accessories (“Police Radar/Lidar Products”). Twelve states indicated an intent to utilize the resulting cooperative purchasing master agreement.
- F. Enterprise Services and a stakeholder team consisting of representatives from Washington, South Carolina, California, and Oklahoma evaluated all responses to the RFP and identified Contractor as an Apparent Successful Offeror.
- G. Enterprise Services determined that entering into this Master Agreement will meet the cooperative purchasing needs and be in the best interest of the State of Washington.
- H. The purpose of this Master Agreement is to enable Participating or Purchasing Entities to purchase Police Radar/Lidar Products 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 Agreement is twenty-four (24) months, commencing February 20, 2019 and ending February 19, 2021; *Provided, however*, that this Master Agreement may be extended for an additional thirty-six (36) months by mutual agreement between Enterprise Services and Contractor. Such extension, however, must be agreed to no later than one hundred and eighty (180) days prior to the end of the twenty-four (24) month term. Such extension shall be on the same terms and conditions as set forth in this Master Agreement. Such extension is further conditioned on the requirement that Contractor shall not be in breach of this Master Agreement or suspended for any reason.
2. **PARTICIPANTS AND SCOPE.** This Master Agreement may be utilized under the following conditions:
 - 2.1. **PARTICIPATING ENTITIES.** Contractor may not sell Police Radar/Lidar Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The terms and conditions set forth in the Master Agreement are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented, or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, and defaults on Orders.
 - 2.2. **PURCHASING ENTITIES.** Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order or other commitment document against the Master Agreement and becomes financially committed to the purchase.
 - 2.3. **PARTICIPATING ADDENDUM.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive or other process to determine which Master

Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

- 2.4. PURCHASING ENTITY RIGHTS. Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. Contractor will apply the charges and invoice each Participating Entity individually.
- 2.5. PARTICIPATING ADDENDUM CHANGES. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between Enterprise Services and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarket Center; Right to Publish; subsection 10.5, Confidentiality of Detailed Sales Data and Participating Addenda; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.
- 2.6. PARTICIPATING ADDENDUM APPROVAL. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 2.7. RESALE. Resale means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prevent sales of Police Radar/Lidar Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

3. SCOPE – INCLUDED GOODS AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Master Agreement, Contractor is authorized to sell only those Police Radar/Lidar Products and set forth in *Exhibit A – Included Police Radar/Lidar Products* for the prices set forth in *Exhibit B – Police Radar/Lidar Products Prices*. Contractor shall not represent to any Participating or Purchasing Entity under this Master Agreement

that Contractor has contractual authority to sell any Police Radar/Lidar Products beyond those set forth in *Exhibit A – Included Police Radar/Lidar Products*.

- 3.2. ABILITY TO MODIFY SCOPE OF MASTER AGREEMENT. Subject to mutual agreement between the parties, Enterprise Services, acting as the lead state, reserves the right to modify the Police Radar/Lidar Products included in this Master Agreement; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Agreement. In no event shall such modification, if authorized by Enterprise Services, limit the requirement for cooperative purchasing agreements to be subject to competitive procurement.
- 3.3. ECONOMIC ADJUSTMENT. In the event that Enterprise Services and Contractor timely agree to extend the term of this Master Agreement as set forth in Section 1, the Police Radar/Lidar Product prices set forth herein (which are subject to a percentage discount) may be adjusted, annually, to account for changes in the producer price index. Beginning twenty-four (24) months after the effective date of this Master Agreement and for every annual anniversary thereafter, the prices set forth in *Exhibit B* 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 Agreement 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 November 1st each year. Prices shall be adjusted on December 1st each year. If an index is recoded, that is the replacement is a direct substitute according to the BLS, this Agreement will instead use the recode. 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:

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

PPI Name	Series ID
Metals and metal products	WPU10
Transportation of freight	WPU3012
Plastic resin and materials	WPU066

The PPI adjustment shall be weighted equally between the above three indices.

- 3.4. PRICE CEILING. Although Contractor may offer lower prices to a Purchasing or Participating Entity during the term of this Master Agreement, Contractor guarantees to provide the Police Radar/Lidar Products at no greater than the prices set forth in *Exhibit B – Police Radar/Lidar Products Prices* (subject to economic adjustment as set forth herein). Notwithstanding any provision to the contrary, Contractor is authorized to provide volume discounts to any Purchasing or Participating Entity during the term of this Master Agreement.
- 3.5. PRICE PROTECTION. During the term of this Master Agreement, in the event of any price decreases at the product manufacturer’s level or cost reductions for Police Radar/Lidar Products, Contractor shall notify Enterprise Services within fifteen (15) business days and

adjust Police Radar/Lidar Products pricing retroactive to the date of the price decline or cost reduction provided by manufacturer.

3.6. **MASTER AGREEMENT INFORMATION.** Enterprise Services shall maintain and provide information regarding this Master Agreement, including scope and pricing, to eligible The Participating Entity.

3.7. **RESALE.** Purchasing Entities may not resell Police Radar/Lidar Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit payments by employees of a Purchasing Entity for Products; sales of Police Radar/Lidar Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. For purposes of this provision, resell means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services.

4. **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Master Agreement and at the time any order is placed pursuant to this Master Agreement. 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 it is in good standing and qualified to do business in the State of Washington and all Participating States, that Contractor possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington and all Participating States.

4.2. **PRODUCT MANUFACTURER AUTHORIZATION.** Contractor represents and warrants that, if Contractor is not the product manufacturer of the Police Radar/Lidar Product, Contractor is a distributor, dealer, or service representative authorized by such product manufacturer to sell such product manufacturer's Police Radar/Lidar Products.

4.3. **CONFORMING PRODUCT LIST.** Contractor represents and warrants that each and all of Contractor's Police Radar/Lidar Products offered pursuant to this Master Agreement (and set forth on Exhibit A) are on the Conforming Products List (CPL) dated August 15, 2018 or, if updated, the most current version of the CPL.

4.4. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are 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. **QUALITY OF GOODS OR SERVICES.** Contractor represents and warrants that any Police Radar/Lidar Products sold pursuant to this Master Agreement shall be merchantable, shall conform to this Master Agreement and Purchasing Entity's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to Participating or Purchasing Entity) any goods whose nonconformance is discovered and

made known to the Contractor. If, in Participating or Purchasing Entity's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will 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.

- 4.6. WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Master Agreement and the three (3) year period immediately preceding the award of the Master Agreement, it is not 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 chapters 49.46, 49.48, or 49.52.
- 4.7. PAY EQUALITY. Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of this Master Agreement for the time period of July 1, 2017 through June 30, 2019, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Master Agreement and any Participating or Purchasing Entity hereunder similarly may suspend or terminate its use of the Master Agreement and/or any agreement entered into pursuant to the Master Agreement.
- 4.8. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, as previously certified in Contractor's bid submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.9. SUBCONTRACTORS. Contractor represents and warrants that it shall incorporate all obligations and understandings of the Master Agreement into any subcontract and require such obligations and understandings flow down to all subcontractors of any tier.
- 4.10. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that it 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 The Participating Entity' employees.

- 4.11. **MASTER AGREEMENT PROMOTION; ADVERTISING AND ENDORSEMENT.** Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Master Agreement with eligible Participating Entities and ensure that those entities that utilize this Master Agreement are eligible Participating Entities. Contractor understands and acknowledges that neither Enterprise Services nor any Participating Entity are endorsing Contractor's goods and/or services or suggesting that such goods are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, the State of Washington, or any Participating or Purchasing Entity in any promotional material without the prior written consent of Enterprise Services.
- 4.12. **MASTER AGREEMENT TRANSITION.** Contractor represents and warrants that, in the event this Master Agreement or a similar contract, is transitioned to another contractor (e.g., Master Agreement expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

5. USING THE MASTER AGREEMENT – PURCHASES.

- 5.1. **ORDERING REQUIREMENTS.** Eligible Purchasers (any Purchasing Entity authorized by a Participating Entity) shall order Police Radar/Lidar Products from this Master Agreement, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchasing Entity but at a minimum, including the use of a purchase order. When practicable, Contractor and Purchasing Entity also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order").
- (a) All order documents must, at a minimum, reference
 - the Master Agreement number;
 - The place and requested time of delivery;
 - A billing address;
 - The name, phone number, and address of the Participating Entity representative;
 - (b) Purchasing Entity may define project-specific requirements and informally compete the requirements among companies having a Master Agreement on an "as needed" basis. This procedure also may be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Participating Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
 - (c) All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Participating

Entity's purchasing office, or to such other individual identified in writing in the Order.

- (d) Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days thereafter.
- (e) Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

5.2. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of Police Radar/Lidar Products will be made as required by this Master Contract, the Purchase Order used by Purchasing Entities, or as otherwise mutually agreed in writing between the Purchasing Entity and Contractor. The following apply to all deliveries:

- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchasing Entity's normal work hours and within the time period mutually agreed in writing between Purchasing Entity and Contractor at the time of order placement. Deliveries to be off-loaded at Purchasing Entity's receiving dock or designated job site by Contractor.
- (b) The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- (c) All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

- (d) All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.
- (e) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Master Agreement shall be identified by the Master Agreement number set forth on the cover of this Master Agreement and the applicable Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- (f) Purchasing Entities may return unopened or unused (non-specialty) Police Radar/Lidar Products within ten (10) business days of receipt for full credit, minus any freight or restocking fee. In such event, Contractor is responsible for shipping costs pertaining to any defective Police Radar/Lidar Products that are returned.
- (g) The prices are the delivered price of the Police Radar/Lidar Products to any Purchasing Entity, including all packing and/or crating charges. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- (h) All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- (i) All Police Radar/Lidar Products must be delivered in the manufacturer's standard package. Shipping packages/containers shall be of durable construction, good condition, properly labeled and suitable in every respect for shipping and handling of the contents. Each shipping package/container shall be marked with the included applicable Police Radar/Lidar Products, quantity, Master Agreement number, and the Purchasing Entity's Purchase Order number.
- (j) Contractor shall use commercially reasonable efforts to offer product packaging with recycled content and made of recyclable material.

5.3. RECEIPT AND INSPECTION. Police Radar/Lidar Products purchased under this Master Agreement are subject to Purchasing Entity's reasonable inspection, testing, and approval at Purchasing Entity's destination. Purchasing Entity reserves the right to reject and refuse acceptance of goods that are not in accordance with this Master Agreement and Purchaser's Purchase

Order. Purchasing Entity may charge Contractor for the cost of inspecting rejected goods. If there are any apparent defects in the Police Radar/Lidar Products at the time of delivery, Purchasing Entity promptly will notify Contractor. At Purchasing Entity's option, and without limiting any other rights, Purchasing Entity may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Police Radar/Lidar Products or, at Purchasing Entity's option, Purchasing Entity may note any damage to the Police Radar/Lidar Products on the receiving report, decline acceptance, and deduct the cost of rejected goods from final payment. Payment for any Police Radar/Lidar Products under such Purchase Order shall not be deemed acceptance of the Police Radar/Lidar Products.

- (a) All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve Contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when the Police Radar/Lidar Products are put to use. Acceptance of such Police Radar/Lidar Products may be revoked in accordance with the provisions of the applicable commercial code, and Contractor shall be liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of any Police Radar/Lidar Products rejected and returned, or for which Acceptance is revoked.
- (b) If any Police/Radar Lidar Products do not conform to the specifications, the Purchasing Entity may require the Contractor to repair or replace the Police/Radar Lidar Product in conformity with the specifications.
- (c) The warranty period shall begin upon Acceptance.

5.4. ON SITE REQUIREMENTS. While on Purchasing Entity's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchasing Entity's physical, fire, access, safety, and other security requirements.

6. QUALITY ASSURANCE.

- 6.1. NEW & CURRENT. All Police Radar/Lidar Products sold by Contractor pursuant to this Master Agreement shall be new, unused, and latest model or design of the manufacturer's product. All Police Radar/Lidar Products shall meet or exceed applicable governmental requirements, standards, specifications, practices, and/or procedures.
- 6.2. MINIMUM PRODUCT SERVICE LIFE. All Police Radar/Lidar Products shall have a minimum product service life of five (5) years from date of receipt by Purchasing Entity. Contractor guarantees replacement parts availability to Purchasing Entity for such minimum product service life. Contractor shall stock or have immediate access to replacement parts.
- 6.3. WARRANTY REQUIREMENTS. Contractor shall warrant all Police Radar/Lidar Products (full parts and labor) for a minimum of one (1) year after receipt of Police Radar/Lidar Products by Purchasing Entity. Contractor guarantees complete repair or replacement of any Police Radar/Lidar Product, or part thereof, that fails in operation during normal and proper use within one (1) year from date of Purchasing Entity's receipt due to defects in design,

material, or workmanship. Any warranty replacement or repair shall be at no cost to Purchasing Entity. The cost to install replacement parts, including shipping and delivery shall be paid by Contractor during the warranty period.

- 6.4. **PRODUCT MANUALS.** Contractor shall provide Purchasing Entity, free of charge, with operating manuals, installation manuals, and service manuals pertaining to the Police Radar/Lidar Products.

7. INVOICING & PAYMENT.

- 7.1. **CONTRACTOR INVOICE.** Contractor shall submit to Purchasing Entity's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:
- (a) Master Contract No. 00218
 - (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) Invoice amount; and
 - (f) Payment terms, including any available prompt payment discounts.

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

- 7.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchasing Entity. Payment is due within thirty (30) days of invoice. If Purchasing Entity fails to make timely payment(s), Contractor may invoice Purchasing Entity 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.
- 7.3. **OVERPAYMENTS.** Contractor promptly shall refund to Purchasing Entity the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchasing Entity shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Participating or Purchasing Entity may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 7.4. **NO ADVANCE PAYMENT.** No advance payments shall be made for any Police Radar/Lidar Products furnished by Contractor pursuant to this Master Agreement.
- 7.5. **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, or payment processing.
- 7.6. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Agreement. Failure to do so shall constitute breach of this Master Agreement. Unless otherwise agreed, Purchasing Entity shall pay applicable sales tax imposed by the State of Washington or any applicable taxing jurisdiction on purchased Police Radar/Lidar Products. Contractor, however, shall not make any charge for federal excise taxes and Purchasing Entity agrees to furnish Contractor with an exemption certificate where appropriate.

8. CONTRACT MANAGEMENT.

8.1. **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 Agreement. Washington State contract administrator shall provide Master Agreement oversight. Contractor’s contract administrator shall be Contractor’s principal contact for business activities under this Master Agreement. The parties may change contractor 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: Richard Worthy
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-7932
Email: Richard.worthy@des.wa.gov

Contractor

Attn: John Broxon
MPH Industries, Inc.
316 East Ninth Street
Owensboro, KY 42303
Tel: (888) 689-9222
Email: jhbroxon@mphindustries.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.

8.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Participating or Purchasing Entity issues pertaining to this Master Agreement.

8.3. **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: John Broxon
MPH Industries, Inc.
316 East Ninth Street
Owensboro, KY 42303
Email: jhbroxon@mphindustries.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.

9. CONTRACTOR SALES REPORTING; ADMINISTRATIVE FEE; & CONTRACTOR REPORTS.

9.1. **NASPO VALUEPOINT ADMINISTRATIVE FEE.** The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of

products under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

- 9.2. PARTICIPATING STATE ADMINISTRATIVE FEES. Some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. The fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee set forth above shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

10. NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS. In addition to other reports that may be required by the Master Agreement, Contractor shall provide the following NASPO ValuePoint reports.

- 10.1. SUMMARY SALES DATA. Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 10.2. DETAILED SALES DATA. Contractor also shall report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Participating Entity name; (4) Participating Entity bill-to and ship-to locations; (4) Participating Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; and (8) line item description, including product number if used. Reports are due on a quarterly basis and must be received by the Enterprise Services and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to Enterprise Services and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by Enterprise Services and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Exhibit A.
- 10.3. NASPO VALUEPOINT EXECUTIVE SUMMARY. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each

calendar quarter.

- 10.4. **REPORT OWNERSHIP.** Timely submission of these reports is a material requirement of the Master Agreement. Enterprise Services and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.
- 10.5. **CONFIDENTIALITY OF DETAILED SALES DATA AND PARTICIPATING ADDENDA.** Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates, shall be Confidential Information. Contractor shall hold Confidential Information in confidence and shall not transfer or otherwise disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

11. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW

- 11.1. **NASPO VALUEPOINT COOPERATIVE PROGRAM.** Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement, including the competitive nature of NASPO ValuePoint procurements, the Master Agreement and Participating Addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- 11.2. **LOGOS.** NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- 11.3. **ANNUAL CONTRACT REVIEW.** Contractor agrees to participate in an annual contract performance review at a location selected by Enterprise Services and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

12 RECORDS RETENTION & AUDITS.

- 12.1 **RECORDS RETENTION.** Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Agreement or final payment for any order placed by a Participating or Purchasing Entity against this Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 12.2 **AUDIT.** Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced the Purchasing Entity and

that Contractor has paid all applicable contract management fees. Accordingly, Contractor shall permit Enterprise Services, any Participating or Purchasing Entity, 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 Agreement or orders placed by a Purchasing Entity under it 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 Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 12.3 OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Participating Entity or Purchasing Entity, Contractor shall reimburse the Participating Entity or Purchasing Entity for any overpayments inconsistent with the terms of this Master Agreement or orders, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records.

13 INSURANCE.

- 13.1 REQUIRED INSURANCE. During the Term of this Master Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*.
- 13.2 WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations. 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 Purchasing Entity's rights to collect from Contractor that Purchasing Entity may have under applicable law. In addition, Contractor waives any statutory immunity to the extent it is required to indemnify, defend, and hold harmless the State of Washington, or any Participating Entity and its agencies, officials, agents, or employees.
- 13.3 INSURANCE CERTIFICATE. Prior to commencement of performance, Contractor shall provide to the Enterprise Services a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides for written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

14 PUBLIC INFORMATION.

- 14.1 This Master Agreement, all related documents, and all records created as a result of the Master Agreement are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. In addition, Participating Addendums and related records shall be subject to public disclosure as required by applicable law pertaining to such Purchasing Entity. Consistent with the Public Records Act, to the extent that any such Contractor document or record – in whole or in part – includes information exempted or protected from disclosure by the Public Records Act, Contractor may mark such document or record – the exempted or protected portions only – with the specific basis for protection under the Public Records Act. In the event that Enterprise Services receives a public records disclosure request that pertains to such properly marked documents or records, Enterprise Services shall notify Contractor of such disclosure request and of the date that the records will be released to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining such disclosure. In the event Contractor fails to file a motion for a court order enjoining such disclosure, Enterprise Services shall release the requested documents on the date specified. Contractor's failure properly to identify exempted or protected 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 materials are protected or exempt from disclosure.

15 DEFAULTS AND REMEDIES

- 15.1 **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Master Agreement 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) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Agreement. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Master Agreement, until such obligations have been fulfilled.
- 15.2 **DEFAULT.** Each of the following events shall constitute default of this Master Agreement by Contractor:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Master Agreement;
 - (b) Contractor breaches any representation or warranty provided herein; or
 - (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 15.3 **REMEDIES FOR DEFAULT.**
- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Agreement 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 Agreement 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.

- (c) Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in this Master Agreement shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

15.4 LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Participating Entity be liable to the other for exemplary or punitive damages.

15.5 GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Master Contract if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Contract; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.
- (b) Termination for Convenience. Enterprise Services, for convenience, may terminate this Master Agreement; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.

16 INDEMNIFICATION.

- 16.1 Contractor shall defend, indemnify, and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), Enterprise Services, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- 16.2 INTELLECTUAL PROPERTY. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
- (1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - (b) specified by the Contractor to work with the Product; or
 - (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - (d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

17 GENERAL PROVISIONS.

- 17.1 TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Agreement.
- 17.2 FORCE MAJEURE. Neither party to this Master Agreement or Orders thereunder shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control which said party provides written notice of within three (3) calendar days to the other specifying such force majeure event and their detailed plan to resume normal operations; *Provided*, however, that, in the event Contractor declares force majeure, Enterprise Services shall have the right to terminate this Master Agreement if such force majeure event interferes, in Enterprise Services' judgment, with the successful performance of Contractor's obligations under this Master Agreement for more than thirty (30) days.
- 17.3 COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.
- 17.4 INTEGRATED AGREEMENT. This Master Agreement 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.
- 17.5 AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- 17.6 AUTHORITY. Each party to this Master Agreement, 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 Agreement and that its execution, delivery, and performance of this Master Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.7 NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall

be or is intended to be created by or under this Master Agreement. Neither party is an agent of the other party nor authorized to obligate it.

- 17.8 ASSIGNMENT. Contractor may not assign its rights under this Master Agreement 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 provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Master Agreement 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 Agreement notwithstanding any prior assignment of its rights.
- 17.9 BINDING EFFECT; Successors & ASSIGNS. This Master Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 17.10 PUBLIC INFORMATION. This Master Agreement and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56.
- 17.11 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 the Contractor now has or which may accrue to the 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 the Contractor's obligations under this Master Agreement, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action. Contractor irrevocably assigns to a state Participating Entity outside the State of Washington any claim for relief or cause of action as described in this subsection, and the same right to control such litigation, in connection with any goods and/or services provided in the Participating Entity's state.
- 17.12 FEDERAL FUNDS. To the extent that any Participating Entity or Purchasing Entity uses federal funds to purchase Police Radar/Lidar Products pursuant to this Master Agreement, such Participating Entity or Purchasing Entity shall propose for Contractor's consideration, with its order, any applicable requirement or certification that must be satisfied by Contractor. If agreeable to Contractor, such conditions may be added to the Purchase Order.
- 17.13 SEVERABILITY. If any provision of this Master Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Agreement, and to this end, the provisions of this Master Agreement 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 Agreement.
- 17.14 WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Agreement, nor shall any purported oral modification or rescission of this Master Agreement 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. Similarly, failure of any Participating Entity or Purchasing Entity to insist upon the strict performance of any of the terms and conditions of any Participating Addendum or Purchasing Order, or failure to exercise any rights or remedies provided therein or by law, or to notify Contractor in the event of breach, shall not release Contractor of any of its obligations under such Participating Addendum or Purchasing Order, nor shall any purported oral modification or rescission of such by either party operate as a waiver of any such terms thereof.

- 17.15 SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Agreement shall survive and remain in effect following the expiration or termination of this Master Agreement, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.16 GOVERNING LAW. The validity, construction, performance, and enforcement of this Master Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules. The validity, construction, and effect of any Participating Addendum pertaining to the Master Agreement or Order placed pursuant to such Participating Addendum shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- 17.17 JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Master Agreement, 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; *Provided*, however, that venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Participating Entity's State.
- 17.18 SOVEREIGN IMMUNITY. In no event shall this Master Agreement, any Participating Addendum or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court.
- 17.19 ATTORNEYS' FEES. Should any legal action or proceeding be commenced by either party in order to enforce this Master Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- 17.20 FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Master Agreement 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 Agreement. Each party hereto and its counsel has reviewed

and revised this Master Agreement 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 Agreement. Each term and provision of this Master Agreement to be performed by either party shall be construed to be both a covenant and a condition.

- 17.21 FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Master Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Agreement.
- 17.22 EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Master Agreement in their entirety.
- 17.23 CAPTIONS & Headings. The captions and headings in this Master Agreement 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 Agreement nor the meaning of any provisions hereof.
- 17.24 ELECTRONIC SIGNATURES. A signed copy of this Master Agreement or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Master Agreement or such other ancillary agreement for all purposes.
- 17.25 COUNTERPARTS. This Master Agreement 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 Agreement 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 Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON

Department of Enterprise Services

By:

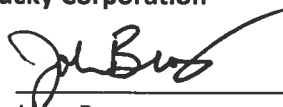


Corinna Cooper

Its: Acting Statewide Goods & Services
Procurement Manager

MPH INDUSTRIES, INC.,
a Kentucky Corporation

By:



John Broxon

Its: President

INCLUDED POLICE RADAR/LIDAR PRODUCTS

Category A Speed Enforcement Systems	
	Description
	BEE III
	Enforcer
	Python III
	Ranger EZ
	SpeedGun Pro
	SpeedLaser B
	SpeedLaser R
	SpeedLaser S
	SpeedLaser T
	Sure Shot

Category B - Speed Advisory Systems	
Trailer Mounted Advisory Systems	
Unit	Description
SM4-12V	Speed Monitor IV, basic package
CROSSGRD-BAS	Crossing Guardian, basic package
SPDGD-AC	Speed Guardian, AC, basic package
SPDGD-SOLAR	Speed Guardian, solar, basic package
SMF-AC	Speed Monitor F, AC, basic package
SMF-SOLAR	Speed Monitor F, solar, basic package
SCOUT-BAS	Street Scout Trailer, basic package
SPDPAT-BAS	Speed Patrol Trailer, basic package
SMT18-BAS	Speed Monitor 18 Trailer, basic package
MATRIX-3L-BAS	Full matrix trailer, 3 line, basic package
TSTAT-BAS	TrafficStat traffic statistics unit

Category D – Parts & Accessories	
Unit	Description
REARANT-PYT-K	Rear antenna kit for Python III K-band radar
REARANT-PYT-KA	Rear antenna kit for Python III Ka-band radar
UPGRADE-FS-PYT3	Upgrade Python 3 radar to add fastest vehicle and same direction modes
REARANT-BEE-K	Rear antenna kit for BEE III K-band radar
REARANT-BEE-KA	Rear antenna kit for BEE III Ka-band radar
UPGRADE-MOTO-BEEKA	Upgrade BEE III Ka-band radar to the waterproof motorcycle unit.
SPDINTF-BEE	Add speedometer interface (CAN or VSS) to BEE III
REARANT-ENF-KA	Rear antenna kit for Enforcer Ka-band radar
REARANT-RNG-KA	Rear antenna kit for Ranger EZ Ka-band radar

Additional Items	
Unit	Description
SPG-BAT	Speedgun Pro, Battery version
SPG-DASH	Speedgun Pro, Dash-mounted version
PYTSTD-1KA	Python III standard model with one Ka-band antenna
BEE3-1KA	BEE III standard model with one Ka-band antenna
OPT-TSTAT-BT	Bluetooth option for TrafficStat
OPT-TSTAT-SOL	Solar recharger option for TrafficStat

POLICE RADAR/LIDAR PRODUCTS PRICES

Category A Speed Enforcement Systems	
Description	Price
BEE III Note: K-band, single antenna, Model BEE-1K	\$1,349.00
Enforcer Note: Ka-band, single antenna, Model ENF-1KA	\$1,379.00
Python III Note: K-band, single antenna, Model PYTSTD-1K	\$885.00
Ranger EZ Note: K-band, single antenna, Model RNG-1K	\$1,859.00
SpeedGun Pro Note: corded, stationary version, Model SPG-CORD	\$1,229.00
SpeedLaser B Note: Model LASER-B-BAS	\$5,000.00
SpeedLaser R Note: Model LASER-R-BAS	\$5,000.00
SpeedLaser S Note: Model LASER-S-BAS	\$5,000.00
SpeedLaser T Note: Model LASER-T-BAS	\$5,000.00
Sure Shot Note: Model SURESHOT-BAS	\$2,399.00

Category B - Speed Advisory Systems		
Trailer Mounted Speed Advisory Systems		
Unit	Description	Price
SM4-12V	Speed Monitor IV, basic package	\$2,018.00
CROSSGRD-BAS	Crossing Guardian, basic package	\$3,015.00
SPDGD-AC	Speed Guardian, AC, basic package	\$2,216.00
SPDGD-SOLAR	Speed Guardian, solar, basic package	\$3,908.00
SMF-AC	Speed Monitor F, AC, basic package	\$4,202.00
SMF-SOLAR	Speed Monitor F, solar, basic package	\$6,055.00
SCOUT-BAS	Street Scout Trailer, basic package	\$5,400.00
SPDPAT-BAS	Speed Patrol Trailer, basic package	\$7,364.00
SMT18-BAS	Speed Monitor 18 Trailer, basic package	\$9,899.00
MATRIX-3L-BAS	Full matrix trailer, 3 line, basic package	\$21,559.00
TSTAT-BAS	TrafficStat traffic statistics unit	\$2,400.00

Category B - Speed Advisory Systems

Unit	Description	Price
SM4-12V	Speed Monitor IV, basic package	\$2,018.00
CROSSGRD-BAS	Crossing Guardian, basic package	\$3,015.00
SPDGD-AC	Speed Guardian, AC, basic package	\$2,216.00
SPDGD-SOLAR	Speed Guardian, solar, basic package	\$3,908.00
SMF-AC	Speed Monitor F, AC, basic package	\$4,202.00
SMF-SOLAR	Speed Monitor F, solar, basic package	\$6,055.00
SCOUT-BAS	Street Scout Trailer, basic package	\$5,400.00
SPDPAT-BAS	Speed Patrol Trailer, basic package	\$7,364.00
SMT18-BAS	Speed Monitor 18 Trailer, basic package	\$9,899.00
MATRIX-3L-BAS	Full matix trailer, 3 line, basic package	\$21,559.00
TSTAT-BAS	TrafficStat traffic statistics unit	\$2,400.00

Category D – Parts & Accessories

Unit	Description	Price
REARANT-PYT-K	Rear antenna kit for Python III K-band radar	\$294.00
REARANT-PYT-KA	Rear antenna kit for Python III Ka-band radar	\$405.00
UPGRADE-FS-PYT3	Upgrade Python 3 radar to add fastest vehicle and same direction modes	\$129.98
REARANT-BEE-K	Rear antenna kit for BEE III K-band radar	\$450.00
REARANT-BEE-KA	Rear antenna kit for BEE III Ka-band radar	\$529.00
UPGRADE-MOTO-BEEKA	Upgrade BEE III Ka-band radar to the waterproof motorcycle unit.	\$350.00
SPDINTF-BEE	Add speedometer interface (CAN or VSS) to BEE III	\$100.00
REARANT-ENF-KA	Rear antenna kit for Enforcer Ka-band radar	\$480.00
REARANT-RNG-KA	Rear antenna kit for Ranger EZ Ka-band radar	\$526.00

Additional Items

Unit	Description	Price
SPG-BAT	Speedgun Pro, Battery version	\$1,375.00
SPG-DASH	Speedgun Pro, Dash-mounted version	\$1,597.00
PYTSTD-1KA	Python III standard model with one Ka-band antenna	\$1,243.00
BEE3-1KA	BEE III standard model with one Ka-band antenna	\$1,470.00
OPT-TSTAT-BT	Bluetooth option for TrafficStat	\$150.00
OPT-TSTAT-SOL	Solar recharger option for TrafficStat	\$395.00

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor obtain 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 and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Master Contract.
 - b. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.

The limits of all insurance required to be provided by Contractor 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.

A cross-liability clause or separation of insured condition shall be included in all general liability, professional liability, pollution, and errors and omissions policies required by this Master Contract.

2. **INSURANCE CARRIER RATING.** Coverages provided by the 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.** Except for Works' Compensation, Professional Liability, Personal Automobile Liability, and Pollution Liability Insurance, all required insurance shall include the State of Washington and all authorized Participating or Purchasing Entities (and their agents, officers, and employees) as an Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Upon request by Enterprise Services, 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. A renewal certificate shall be delivered to Enterprise Services no less than ten (10) days prior to coverage expiration. Failure to 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.
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 Participating or Purchasing Entity. All insurance or self-insurance of the State of Washington and/or Participating or Purchasing Entity 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, or 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 Participating or Purchasing Entity for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Contract number stated on the cover of this Master Contract.