



**M E M O R A N D U M**  
**City of Austin**  
**Financial Services Department**  
**Purchasing Office**

**DATE:** November 6, 2020

**TO:** Memo to File

**FROM:** Erin D'Vincent, Procurement Supervisor

**RE:** MA 5000 GC190000004 – Industrial Supplies and Equipment with Fastenal & SID/MSC

This contract was replicated from MA 7400 GC190000004. The intent of the replication is to transfer unencumbered contract funds from MA 7400 GC190000004 to MA 5000 GC190000004.

<b>MA 7400 GC190000004</b>	<b>Authorized</b>	<b>Encumbered</b>
Initial Term – 7/1/2019 – 6/30/2023	\$5,664,000	\$2,131,837.37
<b>Total</b>	<b>\$5,664,000</b>	<b>\$2,131,837.37</b>

<b>MA 5000 GC190000004</b>	<b>Authorized</b>
Initial Term – 7/1/2019 – 6/30/2023	\$3,532,162.63
<b>Total</b>	<b>\$3,532,162.63</b>



# City of Austin

## Purchasing Office

P.O. Box 1088, Austin, TX 78767

July 8, 2019

Fastenal Company  
Zach Wise  
Government Sales Manager  
2001 Theurer Blvd.  
Winona, MN 55987

Dear Zach:

The Austin City Council approved the execution of a contract with your company for industrial supplies and equipment in accordance with TXMAS-18-51V07.

Responsible Department:	Citywide Departments
Department Contact Person:	Sandy Wirtanen
Department Contact Email Address:	<a href="mailto:Sandy.wirtanen@austintexas.gov">Sandy.wirtanen@austintexas.gov</a>
Department Contact Telephone:	512-974-7711
Project Name:	Industrial Supplies and Equipment
Contractor Name:	Fastenal Company
Contract Number:	MA 7400 GC190000004
Contract Period:	7/1/2019 – 6/30/2023
Dollar Amount	\$5,664,000 divided between the contractors
Requisition Number:	RQM 7400 19061400580
Agenda Item Number:	47
Council Approval Date:	June 19, 2019

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Sandy Wirtanen  
Procurement Specialist IV  
City of Austin  
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
FASTENAL COMPANY ("Contractor")  
FOR  
INDUSTRIAL SUPPLIES AND EQUIPMENT  
MA 7400 GC190000004**

This Contract is between Fastenal Company having offices at Winona, MN 55987 and the City, a home-rule municipality incorporated by the State of Texas and is effective on the date signed by an authorized representative of the City. Solicitation requirements are met by using Contractor's TXMAS Contract No. TXMAS-18-51V07.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 This document
- 1.1.2 Exhibit A, City's Standard Purchase Terms & Conditions
- 1.1.3 Exhibit B, Non-Discrimination and Non-Retaliation Certification
- 1.1.4 TXMAS Contract No. TXMAS-18-51V07

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This document
- 1.2.2 The City's Standard Purchase Terms & Conditions as referenced in Section 1.1.2
- 1.2.3 Non-Discrimination and Non-Retaliation Certification as referenced in Section 1.1.3
- 1.2.4 TXMAS Contract No. TXMAS-18-51V07 as referenced in Section 1.1.4

**1.3 Quantity.** There is no guaranteed quantity of goods or services to be purchased pursuant to this contract and there are no minimum order quantities. Quantities will be specified by the City for each Purchase Order.

**1.4 Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for a term of 48 months.

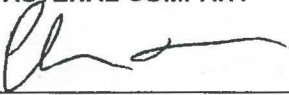
- 1.4.1 Upon expiration of the initial term, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).
- 1.4.2 This is a 48-month Contract. Prices are firm for the first twelve (12) months.

**1.5 Compensation.** The Contractors shall be paid a total Not-to-Exceed amount of \$5,664,000 divided between the Contractors for the Contract term.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

FASTENAL COMPANY



Signature

Charles Miller

Printed Name of Authorized Person

EVP

Title

6-27-19

Date

CITY OF AUSTIN



Signature

Matt Duree

Printed Name of Authorized Person

Procurement Manager

Title

7-1-19

Date

Exhibit A - City's Standard Purchase Terms & Conditions  
Exhibit B - Non-Discrimination and Non-Retaliation Certification

**EXHIBIT A**  
**STANDARD PURCHASE TERMS AND CONDITIONS**  
**INDUSTRIAL SUPPLIES AND EQUIPMENT**

1. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
2. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
3. **WORKFORCE**
  - A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
  - B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
    - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
    - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
  - C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
4. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
5. **INVOICES**:
  - A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
  - B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
  - C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

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- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

**6. PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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7. **FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
  - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

8. **SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

9. **AUDITS and RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
  - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
  - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
  - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

10. **SUBCONTRACTORS:**

- A. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

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- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

B. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

C. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**11. WARRANTY-PRICE:**

A. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

B. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

**12. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

**13. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled Deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such



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repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
  - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
14. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
15. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
16. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
17. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

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18. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
19. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
20. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
21. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.
22. **INDEMNITY:**
- A. Definitions:
- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or

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- (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

23. **INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

**A. General Requirements.**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required below to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified below, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

(1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage

- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

(1) The policy shall contain the following provisions:

- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- (b) Contractor/Subcontracted Work.
- (c) Products/Completed Operations Liability for the duration of the warranty period.
- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

(2) The policy shall also include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to

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be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

24. **CLAIMS**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
25. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
26. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
27. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
28. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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29. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
30. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
31. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
32. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
33. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
34. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
35. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
36. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
37. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

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38. **DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

39. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

40. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

41. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

42. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

43. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

44. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

45. **PROHIBITION OF BOYCOTT ISRAEL VERIFICATION**

Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this **Contract**.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.
- B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:
- i. does not "boycott Israel"; and
  - ii. will not "boycott Israel" during the term of this **Contract**.
- C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.



**EXHIBIT B - NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**  
**City of Austin, Texas**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment

should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

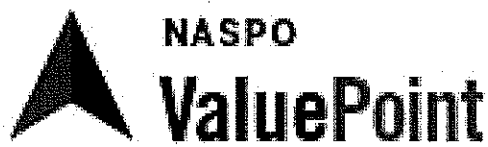
Dated this 27th day of June, 2019

CONTRACTOR

Authorized Signature

Title

Fastenal Company  
[Signature]  
EVP



**NASPO ValuePoint Master Agreement #8497  
for  
Facilities Maintenance and Repair & Operations (MRO) and  
Industrial Supplies**

This NASPO ValuePoint Master Agreement ("Master Agreement") is between the State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS"), as the Lead State, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities and Fastenal Company ("Contractor"). This Master Agreement is effective on the date that it has been signed by the parties and has been approved as required by applicable law ("Effective Date").

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**1. Master Agreement Order of Precedence**

a. Any Order placed under this Master Agreement shall consist of the following documents:

(1) A Participating Entity's Participating Addendum ("PA"), substantially in the form attached hereto as Exhibit A;

(2) NASPO ValuePoint Master Agreement and its exhibits:

Terms and conditions of the Master Agreement, then its exhibits, to be interpreted in the following order:

- Exhibit C - Provisions Required by Federal Law
- Exhibit B - Description of Products, Price, and Services
- Exhibit B-1 - Vending Machine Offerings
- Exhibit B-2 - Percentage Off Discounts
- Exhibit E - Contractor Branch Listings
- eMarket Center Addendum
- Exhibit D - NASPO ValuePoint Detailed Sales Data Report Form
- Exhibit A - Sample Participating Addendum
- Exhibit F - Green Policy Statement
- Exhibit G - Recycling Programs

(3) A Purchase Order issued against the Master Agreement;

(4) Any terms and conditions provided electronically or online or as part of Product materials or descriptions or guidelines; and

(5) Any Contractor's online or third party terms and conditions.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

## **2. Definitions**

**Acceptance** means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

**Acceptance Testing** means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**Contract** means any Order or Purchase Order or other agreed upon ordering instrument issued by a Purchasing Entity under this Master Agreement, together with the terms and conditions of this Master Agreement.

**Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Embedded Software** means one or more software applications which permanently reside on a computing device.

**Environmentally Preferable Product** means products and services that have a lesser or reduced effect on human health and the environment when compared to competing products or services that serve the same purpose.

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** means the State centrally administering any resulting Master Agreement(s).

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the members of the NASPO ValuePoint Cooperative Purchasing Program, and the Contractor, as now or hereafter amended.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.)

for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

**Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to later participate in the Master Agreement

**Product** means any equipment, software (including embedded software), supplies, materials, commodities, goods, documentation or other deliverable supplied, offered, or created by the Contractor pursuant to this Master Agreement as described on Exhibits B and B-1. The term Products, supplies, and products are used interchangeably in this Master Agreement.

**Purchasing Entity or Customer** 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, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

**Services** means installation and additional services as defined in the Master Agreement.

### **3. Term of the Master Agreement; Non-exclusivity**

a. The initial term of this Master Agreement is for one (1) year. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. This Master Agreement is not exclusive. Purchasing Entities retain the right to contract for Products or Services or both through any selection process authorized by law, or to perform the Services themselves. Neither NASPO ValuePoint nor the Lead State guarantees that any specific number of Contracts will be issued or that any specific amount of Products or Services will be required.

## **4. Amendments**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State and Contractor.

## **5. Participants and Scope**

a. Contractor may not deliver Products and Services under this Master Agreement until a Participating Addendum, in a form substantially similar to Exhibit A attached hereto and acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions 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, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. 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 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](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this

Master Agreement between the Lead State 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 eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to 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.

g. **Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, 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 prohibit: payments by employees of a Purchasing Entity for Products; sales of 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.

## **6. Administrative Fees**

a. 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 and services 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.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, 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 in subsection 6a 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.

## 7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports:

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. 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).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing 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; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State 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 D.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. 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.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State 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.

## **8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

a. 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 contract, 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.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that its sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State 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.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

g. Contractor agrees, within 30 days of the effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders

from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

## **9. NASPO ValuePoint eMarket Center**

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

## **10. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

## **11. Price and Rate Guarantee Period**

All prices and rates set forth in Exhibits B and B-1 (and the online catalog) must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed. Contractor shall apply the appropriate discounts as set forth on Exhibit B-2.

## **12. Individual Customers**

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. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **Administration of Orders**

### **13. Ordering**

- a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also 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 Purchasing 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. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
  - (1) The Products, Services or Supplies being delivered;
  - (2) The place and requested time of delivery;
  - (3) A billing address;
  - (4) The name, phone number, and address of the Purchasing Entity representative;
  - (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
  - (6) A ceiling amount of the order for services being ordered; and
  - (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. 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 past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. 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.

#### **14. Shipping and Delivery**

a. 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.

b. 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.

c. 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.

## **15. Laws and Regulations**

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations, including the Federal Terms and Conditions set forth in Exhibit C.

## **16. Inspection and Acceptance**

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. 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 the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any Services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure

period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

## **17. Payment**

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges the highest rate permitted by applicable law per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

## **18. Warranty**

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. If Contractor is not the manufacturer of the product Contractor shall pass through all manufacturer's warranty to Purchasing Entity. 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.

## **19. Title of Product**

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

## **20. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

## **General Provisions**

### **21. Insurance**

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names Oregon, and the Participating States identified in the Request for Proposal as additional insureds, (2) provides that 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.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

## **22. Records Administration and Audit**

a. The 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 permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), 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 five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

## **23. Confidentiality, Non-Disclosure, and Injunctive Relief**

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes



(other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or 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. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. **Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. **Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include 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. 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 section 23. 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.

## **24. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

## **25. Assignment/Subcontracts**

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

## **26. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

## **27. Independent Contractor**

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

## **28. Cancellation**

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

## **29. Force Majeure**

Neither party to this Master Agreement 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. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

## **30. Defaults and Remedies**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. 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 shall 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 these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

### **31. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

### **32. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

### **33. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, 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.

b. Indemnification – 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.

#### **34. No Waiver of Sovereign Immunity**

In no event shall this Master Agreement, any Participating Addendum or any contract 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. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **35. Governing Law and Venue**

- a. The procurement, evaluation, and award of the Master Agreement shall be governed by

and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. 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 Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

### **36. Assignment of Antitrust Rights**

Contractor irrevocably assigns to a Participating Entity who is a state 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 (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

### **37. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

### **38. Leasing or Alternative Financing Methods**

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

### **Authorized Signatures:**

Contractor: FASTENAL COMPANY

By: [Signature]

Title: Senior Executive Vice President Date: 4-25-2018

The State of Oregon acting by and through its Department of Administrative  
Services, Enterprise Goods and Services,  
Procurement Services

By: [Signature]

Title: State Procurement Analyst Date: 4/25/18

Approved pursuant to ORS 291.047

Oregon Department of Justice

By: Karen Johnson via email

Sr. Assistant Attorney General

Date: April 24, 2018

## **eMarket Center Appendix to NASPO ValuePoint Master Agreement**

a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.

b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data [Insert Time Frame Here] to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update every six months to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per quarter. The following



conditions apply with respect to hosted catalogs:

(1) Updated pricing files are required by the 1st of the month and shall go into effect in the eMarket Center on the 1st day of the following month (i.e. file received on 1/01/13 would be effective in the eMarket Center on 2/01/13). Files received after the 1st of the month may be delayed up to a month (i.e. file received on 11/06/09 would be effect in the eMarket Center on 1/01/10).

(2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: [www.sciquest.com](http://www.sciquest.com) or call the JAGGAER Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.

i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.

j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

**(August 2017)**

# Exhibit A to NASPO ValuePoint Master Agreement

## SAMPLE PARTICIPATING ADDENDUM

MASTER AGREEMENT # 8497  
FORM PARTICIPATING ADDENDUM

NASPO ValuePoint  
PARTICIPATING ADDENDUM

**Facilities Maintenance and Repair &  
Operations (MRO) and Industrial Supplies**  
Lead by the State of Oregon



Master Agreement #: 8497

Contractor: **Fastenal Company (Contractor)**

Participating Entity: **State of XXXXX**

The following Goods or services are included in this Addendum:

- Removable Example: All Goods and accessories listed on the Contractor page of the NASPO ValuePoint website.

The following Goods or services are not included in this Addendum:

- Removable Example: Product modifications.
- Removable Example: Installation services.

### **Master Agreement Terms and Conditions:**

1. Scope: This addendum covers the **Facilities Maintenance and Repair & Operations and Industrial Supplies** led by the State of Oregon for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

*[Removable Instruction: Participating States should ensure that paragraph 2 properly defines the scope of participation. The model language in paragraph enables participation by all political subdivisions, institutions of higher education, and other entities included in the state's statewide contract program.]*

2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *[xxxxxxx]*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:  
Address:  
Telephone:  
Fax:  
Email:

Participating Entity

Name:  
Address:  
Telephone:  
Fax:  
Email:

4. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☐ The following changes are modifying or supplementing the Master Agreement terms and conditions.

*[Removable Instruction: Insert text here to address specific changes to the terms and conditions. Indicate which section numbers of the Master Agreement are modified. If no changes are required, check the box above and delete this paragraph.]*

5. Lease Agreements: *[If applicable, insert a statement about whether or not equipment lease agreement terms and conditions included in the Master Agreement have been approved for use by the Participating State and any restrictions or requirements for the use of the lease agreement language in the Master Agreement. If not applicable, mark Section 5 as "**Reserved**".]*

6. Subcontractors: All contactors, dealers, and resellers authorized in the State of [xxxxxx], as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement

unless the parties to the order agree in writing that another contract or agreement applies to such order.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity:	Contractor:
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

*[Additional signatures may be added if required by the Participating Entity]*

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	<a href="mailto:sberry@naspovaluepoint.org">sberry@naspovaluepoint.org</a>

***[Please email fully executed PDF copy of this document to  
[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org)  
to support documentation of participation and posting in appropriate data bases.]***

# **Exhibit B to NASPO ValuePoint Master Agreement**

## **Description of Products, Price, and Services**

1. Products: Contractor may provide Products and Services from the following categories:

- Janitorial Equip. & Supplies (does not include Sanitation Cleaning Chemicals)
- Sanitation Cleaning Chemicals (does not include Janitorial Equipment & Supplies)
- Fasteners
- Material Handling
- Plumbing
- Power Sources
- Outdoor Garden
- Lamps, Lighting, Ballasts
- HVAC
- Hand Tools
- Power Tools (excluding automotive related tools and products)
- Electrical
- Paint
- Security
- Safety (does not include any public safety equipment)

Purchasing Entities may access Contractor's catalog for above products at link:

<https://www.fastenal.com/login>

2. Services:

### **2.1 ESB/MBE/WBE/DV & DBE Programs:**

Contractor recognizes the many opportunities small and diverse businesses provide as our suppliers, vendors and strategic customers. Our Supplier Diversity program facilitates the demand for small business advocacy among city/state/local government. Understanding this demand helps Contractor provide opportunities to small and diverse businesses in the United States.

#### **2.1.1 2nd Tier Program:**

Contractor has committed to building relationships with, and purchasing

goods and services from, qualified small and diverse businesses to the maximum extent possible while meeting our standards for quality and reliability. This program is not limited to just Woman-Owned and Minority-Owned Business Enterprises; we also support and offer products supplied by Small Businesses, Small Disadvantaged Businesses, Veteran-Owned and Service Disabled Veteran-Owned Businesses, and HUB Zone certified businesses. No matter the request or certification criteria, Contractor's Supplier Diversity team can help.

#### 2.1.2 1st Tier Authorized Reseller Program:

Certain projects, contracts and companies have a very high demand for diversity spend. Our 1st tier program establishes strategic alliances with diverse businesses serving as authorized channels of distribution for Fastenal's products and services. Contractor's 1st tier program features strategic partners with a wide range of manufacturing, distribution and service capabilities as well as a full complement of supplier diversity certifications, including Small Business (SBE), Small Disadvantaged Business (SDB), Minority Business Enterprise (MBE), Disadvantaged Business Enterprise (DBE), Woman Business Enterprise (WBE), Small Veteran-Owned Business (SVOB), Small Disabled Veteran-Owned Business (SDVOB), HUB Zone Business (HUB)

## 2.2

### Growth Incentives:

Contractor's pricing includes contract incentives, a fixed category discount structure, market basket pricing that is firm for 12 months, pre-paid standard ground shipping, product warranties, and inventory management solutions.

#### 2.2.1

Contractor is offering an aggressive Growth Incentive Program for the Participating State in order to have the ability to not only bring value to their supply chain, but encourage participation with activities which will provide even greater savings through program compliance. The incentive structure provided through Contractor will act as a tool for the Purchasing Entity to assist with driving compliance to the operations within their organization that can reduce the operational expense involved with the supply chain.

#### 2.2.2 Growth Incentive Program Choices:

1. Single Award
2. Multiple Award with Fasteners & Safety Categories Single Award
3. Multiple Award
4. Multiple Award with incentive for Political Subdivision / Higher Education to select Single Award

Contractor will work with each Purchasing Entity to analyze which incentive program will maximize the value within the supply chain

structure they wish to implement. The Purchasing Entity will have the opportunity to analyze and identify the program which creates the greatest value in relation to their individual needs with the participating addendum.

- 2.3 The quality and availability of recycling or other sustainability programs, including products or services offered:

Contractor will work with the Purchasing Entity to better enable the State to achieve sustainability goals established by the State.

- 2.4 The quality and availability of recycling or other sustainability environmental conservation programs, including products and/or services offered:

Contractor will work closely with the Purchasing Entity to identify and implement environmental conservation programs.

- 2.5 The number of available green environmentally preferable products that meet the solicitation's specifications available, showing a robust supply of green/sustainable products:

Contractor's robust green and sustainable offering includes more than 46,000 products.

Green products are clearly marked with the Fastenal "green" icon to the right, indicating that the item offers environmental benefits according to either a 3<sup>rd</sup> party certifying agency (EcoLogo, Green Seal, etc.) or information provided by the manufacturer. You can search for available green products in each category on Fastenal.com (under Promotions & Special Interests). Contractor also offers an eCatalog of green product solutions found at: Fastenal.com > Products > Green Items.

- 2.6 Recycling Programs:

- Ink & Toner Cartridge Recycling – Fastenal also offers simple, convenient recycling of printer cartridges. Let us do the work for you; it's easy, quick and free.
- RecyclePak® – When the container is full, simply ship it out – it's prepaid. Fastenal offers a wide range of RecyclePak packaging to meet your hazardous material recycling needs.

- 2.7 Contractor's Standard Return Policy:  
Contractor must approve cancellation of any order prior to shipment. Any returns for shipping errors, damage or loss upon delivery must be reported within 10 days of the delivery date. Except as otherwise agreed, Products will not be accepted for return after 30 days from the date of delivery to the Purchasing Entity. Any cancellation or returns



accepted after 30 days may be subject to a restocking fee and other charges, for which the Purchasing Entity shall be responsible. All returns should be made to a Fastenal branch or as otherwise designated by Fastenal, and must be in resalable condition and accompanied with an Invoice.

Sourced Items ordered and delivered to the Purchasing Entity may be non-returnable and non-refundable. Sourced Items that have been ordered by the Purchasing Entity and are non-cancelable by the manufacturer, Purchasing Entity must accept and pay for the delivered quantities, excluding non-conforming items. If Purchasing Entity requests to cancel a Sourced Item order prior to shipment or delivery, Seller will exercise reasonable commercial efforts to discontinue the production of the items by the manufacturer. However, Purchasing Entity will be responsible for any restocking fee or costs imposed by the manufacturer related to the cancellation of the Sourced Item. In the event the Purchasing Entity requests Seller to stock and maintain an inventory of certain quantities of Sourced Item for Purchasing Entity, Purchasing Entity agrees to purchase all remaining Sourced Items maintained by Seller in its inventory at the time the purchase order or contract is terminated or within thirty (30) days after Purchasing Entity discontinues use of the Sourced Item.

## 2.8 Distribution points:

Fastenal's distribution footprint allows for delivery schedules of 24 to 48 hours on many in-stock items by offering same-day service in 2,100+ local markets. Contractor has the ability to cost-effectively operate local branches in not only major cities but also small towns and rural areas across North America, positioning dedicated service teams and customized inventory minutes away from the Purchasing Entity locations.

Contractor's branch-based service model enables Fastenal to:

- Stock product locally for immediate availability;
- Tailor local branch inventory to match Participating State's needs;
- Manage Purchasing Entities inventory to lower their total cost of ownership; and
- Provide industry leading in-person, flexible, value added customer service

Branches are serviced by the nearest of 17 Fastenal distribution centers throughout the U.S. through our company-owned fleet:

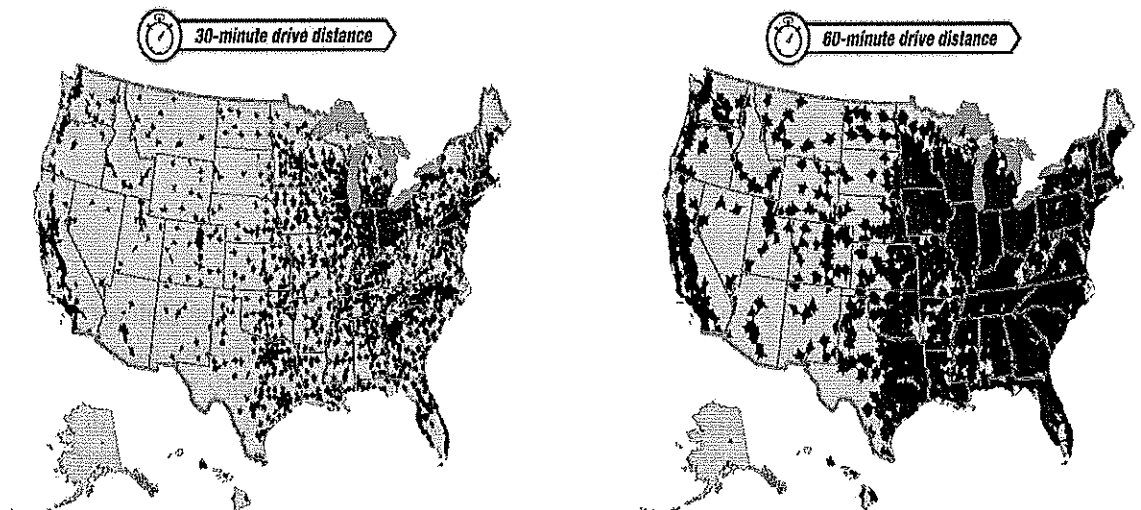
- Fleet Vehicles: 7,580
- Semis: 325
- Straight Trucks: 150
- Sprinters: 139

Contractor's U.S.-based distribution centers are located in Akron, OH;

Atlanta, GA; Denton, TX; Edwardsville, KS; High Point, NC; Houston, TX; Indianapolis, IN; Jessup, PA; Lakewood, WA; Leominster, MA; Modesto, CA; Orlando, FL; Pearl City, HI; Salt Lake City, UT; Spokane Valley, WA; and Winona, MN.

Contractor is able to offer same-day **inside delivery** in 2,100+ local markets by a local Fastenal customer service representative, something no other industrial supplier can do. The key to this solution has been our ability to cost-effectively operate local branches in not only major cities but also small towns and rural areas across North America, positioning dedicated service teams and customized inventory minutes away from the Purchasing Entity locations.

The maps below show the area our local branch teams can service within 30 minutes and 60 minutes. If Purchasing Entities have a need, Fastenal can generally fulfill the need within the hour.



2.9 Scope of geographical coverage offered:

Contractor is offering coverage of all 50 states, Puerto Rico, and Guam.

2.10 Accurate and meaningful marking of green products in the on-line catalog when applicable:

Contractor provides accurate and meaningful labeling of environmentally preferable products offered in our on-line catalog through the green leaf symbol to the right.



3. Additional Services:

3.1 Contract Management Retail Store/Will Call Availability:

Contractor branches are open 8:00am to 5:00pm Monday through Friday, local time. See Exhibit E Contractor's listing of branches incorporated by reference.

Contractor has trained and capable employees that will interact with the Participating Entity and has regional, senior, and executive management responsible for supporting the Purchasing Entity.

3.2 Reporting Capabilities Disaster Recovery Plan:

Contractor will provide reporting/analysis. Contractor will work with the Purchasing Entity to provide access to their order information, through various history reports, spend analysis, pricing audit, and various other reports.

Given the importance of data for information and reporting, it is critical that Contractor stores this information well. Contractor shall backup Data and transaction logs so that information can be restored in the event of hardware or other failure.

3.3 Web based ordering System:

Contractor's website at Fastenal.com is a state-of-the-art transactional website hosting the online catalog with visibility and access to:

- Descriptions
- Images
- Product Specifications
- CAD Drawings
- SDS Sheets
- Contract Price
- Shopping Cart
- Order History
- Product Availability
- Order Templates

The website is available from a traditional browser and via a mobile app for use by the Purchasing Entity that may be away from an office. Contractor offers punch out solutions to the Purchasing Entity that requires them.

3.4 Contractors point of contact information:

Contractor can be contacted at:

Toll Free: 877 507-7555

Email: [nasposupport@fastenal.com](mailto:nasposupport@fastenal.com)

Website: [www.fastenal.com/naspo-value-point](http://www.fastenal.com/naspo-value-point)

FAX: 866 664-1246

Remit to:  
Fastenal Company  
2001 Theurer Blvd.  
Winona, MN 55987

### 3.5 E- Commerce and Web Catalog Capabilities:

(1) Display contract pricing and multiple search options from narrow options to specific search criteria:

Contractor allows the Purchasing Entity to search and filter by the following attributes:

- product categories
- descriptions
- key words
- manufactures
- manufacturer part numbers
- industry part numbers
- competitor part numbers
- customer-specific part numbers
- green products

(2) On-line ordering capability:

Contractor hosts a state-of-the-art transactional website to process online orders. All orders are processed through your local branch and sales representative providing quick confirmation and seamless fulfillment on Products. The Purchasing Entity can order catalog items online through multiple time-saving functions.

- Product Search
- Customer Order Templates
- Electronic Quotes
- Fast Order Pad
- File Upload

(3) Order status and order tracking capabilities:

The Purchasing Entity can see the status of their orders at any time during the order process. The local branch can provide tracking information on branch-delivered parts and 3<sup>rd</sup> party tracking numbers are made available in status updates where applicable.

(4) Order history:

The Purchasing Entity can view their history of orders placed online. Order history can be reordered and edited for future use and commonly ordered items can be saved into order templates for ease of re-ordering.

In addition the Purchasing Entity has the power of FAST 360° to review their spend and evaluate it by time period, category, and location. The

Purchasing Entity may search for items previously purchased and utilize the data to see where the product went and the price previously paid.

(5) The Purchasing Entity can develop personal lists and profiles, and a secure means for storing procurement card information:

Contractor's website offers user profiles and user hierarchy. Each Participating Entity can manage and store account information such as shipping and billing locations, along with encrypted and secured procurement card information on a PCI Compliant website. In addition to storing card information, the Purchasing Entity can also store their favorite items in an order template or their frequently shipped to locations in My Addresses.

(6) Online help to use site should be available at minimum during normal work hours.

Support is available from both the local branch and a dedicated online support team. The Customer Service Center will be staffed from 8 a.m. to 5 p.m. in every time zone of the Participating States – toll free at 877-507-7555.

E-commerce support is available toll free at 877-507-7555 and [webhelp@fastenal.com](mailto:webhelp@fastenal.com).

(7) Technical data, illustrations, Safety Data Sheets (SDS), parts availability, and access to web-based product sourcing is required:

All products contain technical information in the form of product attributes, product descriptions, and detailed notes fields. This information can guide the Purchasing Entity by the type of product or the specific application of the product. Many products contain CAD Drawings and "Product Standards" informational PDF sheets which contain technical data such as chemical, mechanical, and performance information. The SDS sheets are available in the product detail page of the corresponding product. Additionally, the "Supply Chain" section on website shows availability at the local Fastenal branch. All products visible on Fastenal's website can be sourced in various manners.

(8) Allow viewers to view on line product availability by location.

All standard parts display product availability information and an estimated delivery range. When the Purchasing Entity is logged into their branch account, inventory from that branch is visible on the "My Branch" tab so they can easily shop the items that are available for same day pickup or delivery.

(9) Ability to block certain items or categories.

Products or categories may be restricted from purchase. Restricted items will be displayed as restricted and the Purchasing Entity is not allowed to purchase the items.

(10) Ability to accept "P-Card" payments.

Contractor has the ability to process Visa, MasterCard, and American Express LI, LII, and LIII transactions.

3.6 Electronic Data shall be stored for each Participating State in the following ways:

The electronic information for each state is securely stored and administered within various systems including point-of-sale (POS), contract management, and sales management system. All data is managed in accordance with Fastenal's cyber security protocols.

Contractor has a Business Continuity plan to outline their order processing and product distribution processes to accommodate such an event. This plan covers all aspects of their business, including corporate operations, distribution centers, and branches. Due to the sensitive and confidential nature of the technology controls and security measures utilized, a more detailed description of their security protocols can't be provided.

Contractor's approach to information security is based on a philosophy of continuous improvement that is informed through a risk-based evaluation of the people, processes, and technology used to safeguard our sensitive data and systems. Contractor utilizes various information technology security controls and processes to support operational activities including, but not limited to: security and computer operations management, service delivery and change management, secure software development, vulnerability management, strategy and planning, end-user computing, internal security audit, configuration management, risk management, incident response, disaster recovery, and business continuity planning. To ensure robust adoption of sound information security principles and governance, Contractor has chosen to align with industry best practice standards and frameworks such as CIS, NIST, ISO, and PCI, where applicable.

3.7 Forced Substitutions:  
Contractor will not conduct forced substitutions. The local servicing branch will work directly with the Purchasing Entity to identify possible equivalent substitutions which will satisfy the Purchasing Entities needs.

3.8 Contract Management:  
Contractor's Contract Management team helps implement contract

terms, conditions, pricing, and time lines for deliverables such as reporting, rebates, and additional discounts (if any). Contract Management works closely with Contractor's Vice President of Government Sales, the VP of Contract Development and Support, and the Director of Contract Management. The Master Agreement will be managed within Contractor's contract management system, a proprietary database that manages pricing, FOB terms, rebates, reporting, and other relevant terms.

The Contract Management team will be responsible for ensuring that the contract is correctly administered. The Contract Management System administers the Master Agreement (including any participating addendum unique terms, fees or reporting) to the Fastenal branch account, driving compliance via the Fastenal branch point of sale (POS) system. The Contract Management team will also manage the administration of contract amendment(s), extensions, price updates, and other administrative correspondence.

Contractor will provide all training specific to contract utilization, online ordering, product delivery, product returns, EPPs and customer service processes at no additional cost.

### 3.9

#### Shipping:

All shipments are to be delivered directly to the purchasing department/division address. All shipments shall include a packing label that includes at a minimum the following information on the outside of the package:

- Purchasing Entity name;
- Delivery Address;
- Purchasing Entity and floor;
- Contact; and
- Telephone number.

A packing slip shall also be included with each shipment, which shall include at a minimum the following information in no particular order:

- Line item description;
- Date ordered;
- Quantity ordered;
- Quantity included in shipment;
- Any backordered items;
- Unit Price and extension;
- Number of parcels;
- Purchase Order Number;
- Purchasing Entity name; and
- F.O.B. Destination.

Contractor ensures that its Packing Slip references information important to the Purchasing Entity, including all of the fields identified

above. Furthermore, Contractor's product descriptions and part #s on the Packing Slip match exactly those on the product labels making for simple receipt and validation processes by the Purchasing Entity. Contractor can additionally identify the Purchasing Entity's item #, a customer's P.O. line number, and other relevant information on the Packing Slip.

Contractor's prices for all items associated with the Master Agreement are FOB Destination anywhere within the Participating States or geographic area.

Exception to FOB Destination:

- 1) Items not in-stock at the local branch or not in-stock at the Primary Distribution Center for AK, HI, PR, & GU.
- 2) Sourced items and orders requiring special handling or expedited shipment. Items requiring an exception would be communicated to the Purchasing Entity prior to acceptance of a purchase order. Approved charges would be prepaid and billed to the Purchasing Entity.

Specify Guaranteed Delivery Time for In-Stock Items. Contractor's guaranteed delivery time for In-stock Items does not exceed 24 to 48 hours. Delivery times in AK, HI, PR, and GU may differ.

Specify Guaranteed Delivery Time for Non-Stock Items. Contractor's guaranteed delivery time for Non-stock Items does not exceed 10 days from the date of order. Delivery times in AK, HI, PR, and GU may differ.

### 3.10

Reporting Capabilities:

The Contractor shall provide information on all reports that are available without charge, to include a brief description of the report and the frequency. The Participating States may have additional reporting requirements. Contractor commits to providing consolidated reporting to the Purchasing Entity at frequencies they require or as requested.

Typical reporting includes, but is not limited to:

- Net Spend Report – showing spend per account under the contract.
- Usage Detail – showing invoice level part detail for each account under the contract.
- Concept Spend – showing contract spend within specific product categories.
- Executive Summary Report – multi-faceted contract level dashboard report including total spend, spend by product category, spend by agency type, accounts receivable, spend by individual account, cost savings (freight saved, invoice dollars saved, previous price paid, receiving disbursement, inventory management, PO reduction, extra value services, other savings,



vendor reduction, product source, emergency services, kiting, committed inventory, material substitution), inactive accounts, spend by account specialty.

- Rebate and Administrative fee reports
- Supplier Diversity reporting
- Environmentally Preferred products reporting
- FAST Solution reporting
- Workflow management reporting via online Catalog

Reports provided in Excel format unless otherwise noted. Contractor does not charge money for any reports to the Purchasing Entity, and will work with each request to try to meet the Purchasing Entities needs if the information is not already available.

The Purchasing Entity has access to orders placed via the website or through punch out on their account on the web. These orders can be reviewed by order or item category for easy reference.

### 3.11 Sustainability/Environmental Practices:

(1) Contractor is self-certified to the international standard for environmental management systems, ISO 14001, and conducts annual audits to evaluate our performance and recommend future initiatives. Contractor has a Green Policy Statement and a copy is attached hereto as Exhibit F.

#### (2) Product Take Back/End of Life:

Products with recycling solutions are clearly identified in on-line catalogs and on website with the symbol to the right. Contractor currently offers recycling solutions for lamps, ballasts, mercury-containing devices, batteries, printer cartridges, and personal protective equipment.



- Ink & Toner Cartridge Recycling – Contractor also offers simple, convenient recycling of printer cartridges. Let us do the work for you; it's easy, quick and free.
- RecyclePak® – When the container is full, simply ship it out – it's prepaid. Contractor offers a wide range of RecyclePak packaging to meet your hazardous material recycling needs.

Copy of Contractor's Recycling Programs are attached hereto as Exhibit G.

### 3.12 Vending Machines:

Contractor offers these services. See Exhibit B-1 Vending Machine Offerings incorporated by reference.

Contractor's vending machines are a value-added service that the Purchasing Entity can use to source products. Contractor's local branch manages the sourcing, procurement, delivery, and, if required, the inventory management of the sourced product as part of a Fastenal vendor managed inventory solution.

3.13 Installation, if applicable:

Contractor's ability to provide installation services of products or equipment that a Participating State may chose, if applicable to its State rules.

Contractor has dedicated Implementation teams throughout the U.S. and with more than 152 implementation specialists overall. This nationwide dedicated team of implementation specialists will provide installation services for shelving, racking, bins, dispensers, vending machines, and other items related to the product line.

3.14 Sourced Products, if applicable:

3.14.1 Contractor sourced products is a product which is not currently listed in the suppliers contract catalog or on-line ordering system at the time of order receipt but is capable of being supplied through the Contractor, if applicable to the Participating State's rules.

Contractor's sourcing model is a value-added service that is offered to the Purchasing Entity to source products. The local Fastenal branch manages the sourcing, procurement, delivery, and, if required, the inventory management of the sourced product as part of a Fastenal vendor managed inventory solution.

3.14.2 If the Contractor is capable of supplying sourced products they must be direct line extension products which have a similar item to an established product category and the Contractor must already have a publically recognized business partnership with the "brand," if applicable to its Participating State's rules.

Contractor's sourced products are a direct line extension of the product offering consisting of thousands of vendors with whom Contractor has developed a publically recognized business relationship around promoting and developing the brands representative of the Contractor.

3.15 Volume Discount:

3.15.1 Contractor understands that the Purchasing Entity may, from time to time, have unique purchasing needs requiring the purchase of products in a volume not related to ordinary purchase volume. Contractor will assist the Purchasing Entity by identifying and passing

on the additional value which may be obtained through reaching a volume purchase. The volume discounts will be negotiated between the local Fastenal branch and the Purchasing Entity based on market conditions.

Additionally, Contractor offers each Participating State and political subdivision the opportunity to negotiate a "Custom Market Basket" program. This program allows the political subdivision within a Participating State to negotiate additional items to be added to the market basket and negotiate additional discounts to be applied to these items. The Custom Market Basket may be reviewed annually and updated as required. All Custom Market Basket items will fall within the scope of the Master Agreement and participating addendum.

3.15.2 Contractor offers an additional cumulative ordering volume discount if total cumulative product spend, as reported under the Master Agreement (inclusive of all Participating Entities within a Participating State) exceeds the volume target established in a given contract year. The additional discount will apply to all product category discounts offered in Exhibit B-2. The volume discount excludes market basket priced items. Additional discounts resulting from meeting cumulative ordering volumes will be effective no later than the 1st day of the 14th month (allowing a one-month evaluation period) of the contract for the second year of the contract and run for 12 consecutive months, at which time spend for the next year will be evaluated for minimum spend requirements to achieve the additional volume discount continuation. The maximum additional discount for the life of the contract is 3%. The Cumulative Ordering Volume Discount will be adjusted each contract year to coincide with the 1%, 2%, or 3% discount achieved.

CONTRACT YEAR SPEND of all Purchasing Entities within Participating State	Annual Spend \$5+million	Annual Spend \$8+million	Annual Spend \$12+million
Additional Discount per Spend Level	1%	2%	3%

#### Illustration:

CONTRACT YEAR	7/1/2018 – 6/30/2019	7/1/2019 – 6/30/2020	7/1/2020 – 6/30/2021	7/1/2021 – 6/30/2022	7/1/2022 – 6/30/2023
Spend	\$4 Million	\$6 Million	\$4 Million	\$9 Million	\$13 Million
Contract Year Qualified	No	Yes	No	Yes	Yes
Add'l Discount %	0%	1%	0%	2%	3%
Add'l Discount Start Date & End Date	N/A	8/1/2020 – 7/31/2021	N/A	8/1/2021 – 7/31/2022	8/1/2022 – 6/30/2023

3.15.3 Additional Volume Discount for Minimum Order Quantity. Contractor provides the Purchasing Entity with the additional value of no minimum order requirement. The discount structure provided by Contractor gives each member the purchasing strength of the overall contract volume, reducing the need for concern about consolidating orders. However, as unique situations occur, Contractor provides the Purchasing Entity the opportunity to capture the value derived from consolidating operations. Contractor will provide savings extracted from the operational efficiency of volume purchase to the Purchasing Entity.

3.16 Disaster Recovery:

Contractor shall provide an emergency preparedness plan to aid States during an emergency or disaster recovery with specifics as to response time, supplies availability and other goods and services that is offered.

A Participating State may request hard copy and link to Contractor's emergency preparedness plan on its website.

Contractor to provide lead state with hard copy and website link no later than July 15, 2019.

**EXHIBIT B-1 to NASPO ValuePoint Master  
Agreement**  
**Vending Machine Offerings**

**Exhibit B-1 is incorporated by reference**

## EXHIBIT B-2 to NASPO ValuePoint Master Agreement

Percentage Off Discount:

### Percentage off list per awarded category

Contractor shall apply the following discount percentages to all purchases:

Category	Discount
1. Janitorial Equipment & Supplies (does not include Sanitation Cleaning Chemicals)	30%
2. Sanitation Cleaning Chemicals & Supplies (does not include Janitorial Equipment & Supplies)	25%
3. Fasteners	57%
4. Material Handling	25%
5. Plumbing	30%
6. Power Source	30%
7. Outdoor Garden	25%
8. Lamps & Lighting and Ballasts	30%
9. HVAC	30%
10. Hand Tools	25%
11. Power Tools (excluding automotive related tools and products)	25%
12. Electrical	30%
13. Paint	25%
14. Security	30%
15. Safety (does not include any public safety equipment)	30%

The Contractor's Percentage off list discount will not be reduced throughout the life of the Master Agreement except, Contractor can however provide a higher percentage off list discount by providing the Lead State a thirty (30) day notice and Lead State approving the discount.

## **Exhibit C to NASPO ValuePoint Master Agreement PROVISIONS REQUIRED BY FEDERAL LAW**

Without limiting the generality of Section 15 of the Master Agreement, if applicable, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements. For purposes of this Master Agreement, all references to federal laws are references to federal laws as they may be amended from time to time.

**1. Equal Employment Opportunity.** If this Master Agreement, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**2. Clean Air, Clean Water, EPA Regulations.** If this Master Agreement, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Participating Entity or Purchasing Entity, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

**3. Energy Efficiency.** Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163).

**4. Truth in Lobbying.** The Contractor certifies, to the best of the Contractor's knowledge and belief that:

4.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

4.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant,

loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this Master Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Master Agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**5. HIPAA Compliance.** If the work performed under this Master Agreement are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Contractor agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, work performed under this Master Agreement is covered by HIPAA. Contractor shall comply and cause all subcontractors to comply with the following:

5.1. Privacy and Security Of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and Participating Entity or Purchasing Entity for purposes directly related to the provision of services to clients which are funded in whole or in part under this Master Agreement. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Participating Entity or Purchasing Entity Privacy Rules, or the Participating Entity or Purchasing Entity Notice of Privacy Practices, if done by Participating Entity or Purchasing Entity. A copy of the most recent Participating Entity or Purchasing Entity Notice of Privacy may be obtained from Participating Entity or Purchasing Entity

5.2. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with Participating Entity or Purchasing Entity in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement with Participating Entity or Purchasing Entity and shall comply with the Participating Entity or Purchasing Entity EDI Rules.

5.3. Consultation and Testing. If Contractor reasonably believes that the Contractor's or the Participating Entity's or Purchasing Entity's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the Participating Entity's or Purchasing Entity's HIPAA officer. Contractor or Participating Entity or Purchasing Entity may initiate a request for testing of HIPAA



transaction requirements, subject to available resources and the Participating Entity's or Purchasing Entity's testing schedule.

5.4. If Contractor is deemed to be a business associate of Participating Entity or Purchasing Entity under HIPAA's Privacy Rule, 45 CFR Parts 160 and 164, Contractor hereby provides Participating Entity or Purchasing Entity with satisfactory assurances that if it receives from Participating Entity or Purchasing Entity or any trading partner any protected health information of any individual, it shall maintain the security and confidentiality of such information as required by the HIPAA's Privacy Rule, and other applicable laws and regulations. Without limiting the foregoing, Contractor agrees that:

5.4.1. Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by this Master Agreement or as required by law;

5.4.2. Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Master Agreement;

5.4.3. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Master Agreement;

5.4.4. Contractor will report to Participating Entity or Purchasing Entity any use or disclosure of PHI not provided for by this Master Agreement of which Contractor becomes aware;

5.4.5 Contractor agrees to ensure that any agents, including subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Contractor with respect to such information;

5.4.6. Contractor shall make available to Participating Entity or Purchasing Entity such information as they may require to fulfill their obligations to account for disclosures of such information;

5.4.7. Contractor shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the Participating Entity or Purchasing Entity or trading partner (or created or received by Contractor on behalf of Participating Entity or Purchasing Entity or trading partner) available to Participating Entity or Purchasing Entity and to the Secretary of the United States Department of Health and Human Services, for purposes of determining Participating Entity's or Purchasing Entity's or trading partners' compliance with HIPAA; and

5.4.8. If feasible, upon termination of this Master Agreement, Contractor shall return or destroy all PHI received from Participating Entity or Purchasing Entity or trading partners (or created or received by Contractor on behalf of Participating Entity or Purchasing Entity or trading partners) that Contractor still maintains in any form, and shall retain no copies of such information or, if return or destruction is not feasible, Contractor shall continue to extend the protections of this Master Agreement to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

Subject to the foregoing restrictions, Participating Entity or Purchasing Entity agrees that Contractor may use such PHI in the process of providing transaction mapping,

trading partner profiling and training and mentoring services for Participating Entity or Purchasing Entity and trading partners under this Master Agreement.

**6. Resource Conservation and Recovery.** Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

**7. Substance Abuse Prevention and Treatment.** Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 USC 300x through 300x-64).

**8. Audits.** Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

**9. Debarment and Suspension.** Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

**10. Medicaid Compliance.** To the extent Contractor performs any work whose costs are paid in whole or in part by Medicaid, Contractor shall comply with and cause its subcontractors to comply with the federal and State Medicaid statutes and regulations applicable to the work, including but not limited to:

10.1. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to Participating Entity or Purchasing Entity, the Secretary of Health and Human Services, and as otherwise directed by Participating Entity or Purchasing Entity;

10.2. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;

10.3. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and

10.4. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.

Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

**11. Americans with Disabilities Act.** Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work.

**12. Pro-Children Act.** Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

**13. Federal Tax Information.** Contractor shall comply with the provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. §552a et. seq. related to federal tax information.

**14. Educational Records.** Contractor shall comply with the provisions of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

**EXHIBIT D to NASPO VALUEPOINT MASTER AGREEMENT  
NASPO ValuePoint DETAILED SALES DATA REPORT FORM**

Field Name	Field Description
CONTRACTOR	The awarded Contractor's name
CONTRACTOR CONTRACT NUMBER	Lead State assigned contract number (using Lead State's numbering protocol)
STATE	State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)
CUSTOMER TYPE (SEGMENT)	State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]
BILL TO NAME	Customer (agency) Bill to name
BILL TO ADDRESS	Customer (agency) Bill to address
BILL TO CITY	Customer (agency) Bill to city
BILL TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
SHIP TO NAME	Customer (agency) Ship to name
SHIP TO ADDRESS	Customer (agency) Ship to address
SHIP TO CITY	Customer (agency) Ship to city
SHIP TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
ORDER NUMBER	Contractor assigned order number
CUSTOMER PO NUMBER	Customer provided Purchase Order Number
CUSTOMER NUMBER	Contractor assigned account number for the purchasing entity
ORDER TYPE	Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]
PO DATE (ORDER DATE)	(mm/dd/ccyy)
SHIP DATE	(mm/dd/ccyy)
INVOICE DATE	(mm/dd/ccyy)
INVOICE NUMBER	Contractor assigned Invoice Number
PRODUCT NUMBER	Product number of purchased product
PRODUCT DESCRIPTION	Product description of purchased product

UNSPSC		Commodity-level code based on UNSPSC code rules (8 Digits)
LIST PRICE/MSRP/CATALOG PRICE		List Price - US Currency (\$99999.999) [determined by industrial practice for each contract - uniform for each contract]
NASPO ValuePoint PRICE		NASPO ValuePoint Price- US Currency (\$99999.999)
QUANTITY		Quantity Invoiced (99999.999)
TOTAL PRICE		Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$999999999.999)
Discount Percentage		Percent off of List Price- example=20%
NASPO ValuePoint ADMIN FEE		Administrative Fee based on Total Price - US Currency (\$999999.999)
VAR/Reseller/Distributor		If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located
Optional		More information

[illegible]

## **EXHIBIT E to NASPO ValuePoint Master Agreement**

### **Contractors Branch Listings**

**Exhibit E is incorporated by reference.**

## Exhibit F - to NASPO ValuePoint Master Agreement

### Green Policy Statement

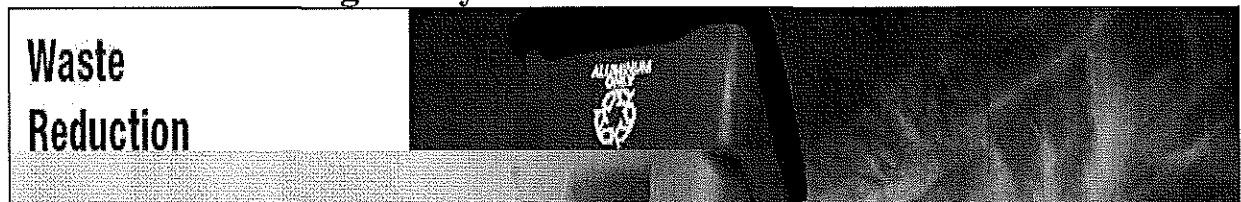


Fastenal's green initiatives are a logical evolution of our lean quality initiatives, which are focused on eliminating waste, creating efficiencies, and continuous improvement. Our green approach is to continuously improve our green credentials, with smart resource use and optimized distribution routes representing two key areas of focus contributing to overall company sustainability and responsibility. Our green approach is also aligned with our government contract compliance processes.

It is our mission to operate our business with minimal environmental impact and help our customers do the same by offering green products and services to help them meet their sustainability needs and goals. This mission comprises the following initiatives:

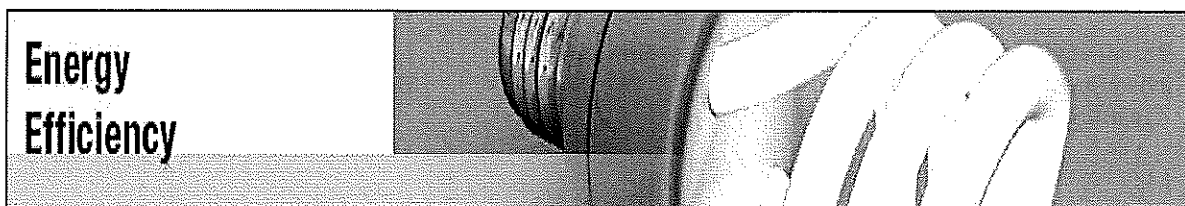
- Establish a green product offering from key suppliers for national distribution and clearly identify those products in our marketing materials, including our catalogs, brochures, promotions, and website
- Offer recycling programs for lamps, ballasts, mercury-containing devices, batteries, printer cartridges and PPE safety products ensuring safe disposal
- Partner with lighting specialists to assist in the planning, specification and implementation of retrofit projects
- Capture and report green consumption data from customer usage reports
- Receive electronic POs, invoices, and other business documents from suppliers and customers whenever possible
- Encourage our customers to sign up for Electronic Invoicing via fax, email, or the web to reduce paper usage
- Offer industrial vending solutions to help reduce wasteful product consumption and redundancy
- Provide local service and solutions with more than 2,700 branch locations worldwide

### What We Are Doing Today





- We reuse or recycle most of our incoming packaging materials (cardboard, polystyrene, shredded paper, air bags, etc.), we use composite pallets and totes for shipping, and our corrugated boxes used for repackaging are made from post-consumer recycled content
- Packaging reduction efforts at select distribution centers with our new automated storage and retrieval system (ASRS). Reusable totes are used in place of cardboard boxes with this new system. Further packaging reduction efforts are also underway for incoming, high volume products.
- We reuse pallets, repair when necessary, throughout distribution
- Increased use of e-mail which greatly reduces the amount of paper used, business records are digitized to minimize hard copy document storage, multifunctional devices (for faxing, printing and photocopying) reduce energy and paper usage.
- We purchase paper made from recycled content, and we recycle our office paper
- We encourage staff and visitors to recycle bottles, plastics and aluminum cans by placing recycling bins at strategic points throughout our branches, distribution centers, and offices
- We recycle our old computers as part of our IT replacement strategy
- We recycle our spent fluorescent lamps, ballasts, batteries and printer cartridges
- We have reduced the amount of our landfill waste by finding ways of recycling waste material, either in-house or in conjunction with others who are able to use the material constructively
- We have developed e-learning opportunities for employee training in conjunction with the Fastenal School of Business to reduce miles traveled
- Fastenal supports entities with a ban on single-use shopping bags by offering alternatives such as recycled paper bags and reusable bags
- Reduced paper usage with electronic accounting practices



- Our consumption of energy is also closely monitored and we take measures to ensure that it is not wasted
- Our distribution centers have been retrofitted with energy-efficient lighting systems
- Our headquarters have been retrofitted with LED lighting systems
- We have a HVAC Preventative Maintenance Program in which our HVAC systems are serviced semi-annually to increase the units' performance and overall efficiency which reduces energy consumption

## Fleet Sustainability



- Our consumption of fuel is closely monitored and we take measures to ensure that it is not wasted
- We utilize Global Information Systems to design truck routes that minimize miles traveled
- Introduced Compressed Natural Gas (CNG) vehicles in select locations to lower fuel costs and emissions

For more information on Fastenal's green initiatives, products or services, please contact

[gogreen@fastenal.com](mailto:gogreen@fastenal.com).

## Certified Green Products



Energy Star

Green Seal

Design for the Environment

EcoLogo

Carpet and Rug Institute



Greenguard Environmental Institute

Forest Stewardship Council

Sustainable Forestry Initiative

USDA BioPreferred

EPA WaterSense

SCS Certified

NEMA Premium

UL Environment

## Exhibit G - to NASPO ValuePoint Master Agreement Recycling Programs



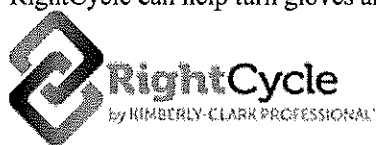
Recycling is more important than ever. It turns materials that would otherwise become waste into valuable resources. It saves money, creates jobs, eliminates waste in landfills, reduces harm to the environment, protects human health and saves energy.

Adopting green policies and procedures will benefit your business and most importantly – the environment. Implementing a recycling program doesn't have to be difficult or expensive. Fastenal can help your facility meet green initiative goals and do the right thing when it comes to protecting our environment.



### RightCycle by Kimberly-Clark Professional

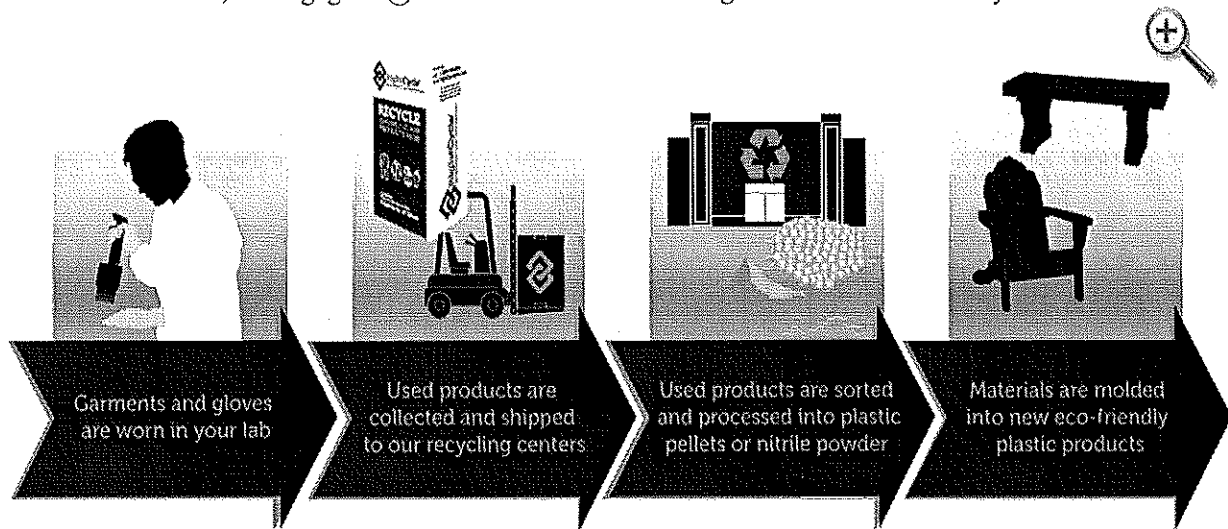
With Kimberly-Clark's new program, RightCycle, you can begin to soar to new heights of sustainability, even setting your sights on zero-landfill. This is the first large-scale recycling program for non-hazardous lab waste and RightCycle can help turn gloves and garments into eco-friendly products like plastic benches and more!



#### Details of Program

1. All products that go into the containers need to be Kimberly-Clark products (gloves and garments).
2. This program is industry-specific so Kimberly-Clark would like to avoid collecting items that will have chemicals on them.
3. This program is currently contained to the USA.
4. The only customer cost is in shipping the full container back to Kimberly-Clark.

For direct information, email [gogreen@fastenal.com](mailto:gogreen@fastenal.com) or click the image below to visit Kimberly-Clark's website.



## RecyclePak®

RecyclePak® makes recycling lamps, ballasts, batteries and mercury devices easy. The prepaid recycling program ensures complete compliance while reducing the risk of contamination by storing hazardous materials at your facility. When the container is full, simply ship it out, it's prepaid! Shop Recycling Kits.



### RecyclePak® Benefits

#### Tracking & Documentation

- Prepaid return shipping with FedEx Ground
- 24/7 online certificates of recycling
- Detailed data on recycling containers

#### Convenient

- National Coverage
- Bulk and direct pick up programs to fit your business size
- Compliance documentation available 24/7 on the web
- Available automatic reorder
- On-time pickup with FedEx Ground

## Call2Recycle®

Visit [www.call2recycle.org](http://www.call2recycle.org) to learn how your business can properly dispose of your "spent" batteries.

For additional assistance, please contact [gogreen@fastenal.com](mailto:gogreen@fastenal.com).



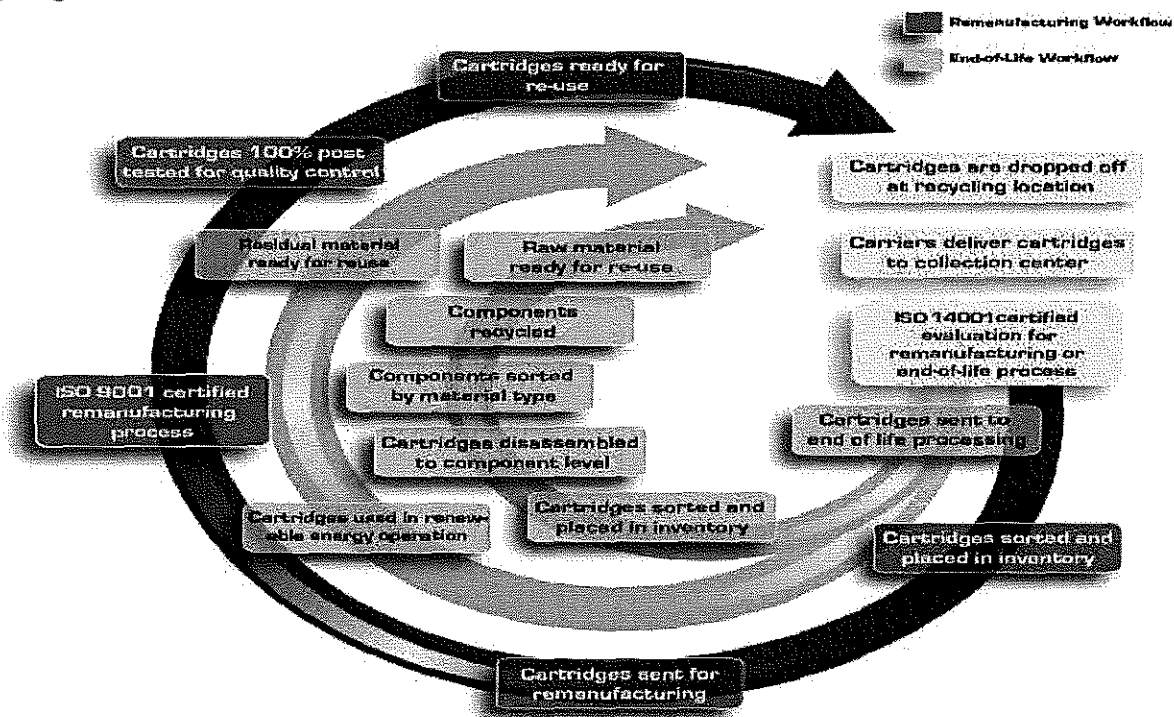
## Ink & Toner Cartridge Recycling

Fastenal offers simple, convenient recycling of printer cartridges and ensures that returned products are recycled properly.

**Let us do the work for you. It's easy, quick and free!**

By collecting these cartridges and supporting remanufactured products, Fastenal keeps non-renewable resources from ending up in landfills. If a cartridge cannot be reused, it is recycled into other products. Our goal is to provide the most efficient recycling program on the market.

### Recycling Process



Available in Canada. Not available in AK, HI, PR, VI.

Use the below link to request prepaid shipping labels or a bulk pickup:

<https://www.fastenal.com/en/308/recycling-programs>

**AMENDMENT No. 1 to  
MASTER AGREEMENT# 8497**

**I.** This is Amendment No. 1 to Master Agreement #8497 dated April 25, 2018, as amended from time to time ("Master Agreement") between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services office ("DAS PS") on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and Fastenal Company hereafter called "Contractor." This amendment is effective on the date it has been signed by both parties.

**II.** The Master Agreement is hereby amended as follows;

The purpose of this Amendment is to revise Exhibit B Market Basket pricing due to miscalculation of some Units of Measurement (UOM) in the exhibit. The Exhibit B of the Master Agreement is hereby replaced with the attached revised Exhibit B Market Basket Pricing 10-24-2018.


**III.** Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of execution of the Master Agreement.

Certification: By signature on this Amendment, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, for a period of no fewer than six calendar years preceding the Effective Date of this Amendment, Contractor has faithfully has complied with and is not in violation of: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**CONTRACTOR: FASTENAL COMPANY:**

By:  EVP Sales 11/28/18  
Name: Title: Date

**DEPARTMENT OF ADMINISTRATIVE SERVICES PROCUREMENT SERVICES, On behalf of  
the member states of the NASPO ValuePoint Cooperative Purchasing Program:**

Approved By:  SPA 11/28/18  
Name: Title: Date

**APPROVED PURSUANT TO ORS 291.047: by Karen Johnson, Sr Assistant Attorney General, via  
email dated November 6, 2018**

**AMENDMENT No. 2 to  
MASTER AGREEMENT# 8497**

**I.** This is Amendment No. 2 to Master Agreement #8497 dated April 25, 2018, as amended from time to time ("Master Agreement") between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services office ("DAS PS") on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and Fastenal Company hereafter called "Contractor." This amendment is effective on the date it has been signed by both parties.

**II.** The Master Agreement is hereby amended as follows;

The purpose of this Amendment is to revise Exhibit B-1 Vending Machines to incorporate the 8497 FAST Solutions Agreement Form by reference. The Exhibit B-1 of the Master Agreement is hereby modified, as set forth in the Revised Exhibit B-1 Vending Machines 12/21/2018, attached hereto.

**III.** Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of execution of the Master Agreement.

Certification: By signature on this Amendment, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, for a period of no fewer than six calendar years preceding the Effective Date of this Amendment, Contractor has faithfully has complied with and is not in violation of: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;(ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**CONTRACTOR: FASTENAL COMPANY:**

By: *Dennalee Papenfuss* *V.P. Contract Dev + Support* *12-31-2018*  
Name: Title: Date

**DEPARTMENT OF ADMINISTRATIVE SERVICES PROCUREMENT SERVICES, On behalf of  
the member states of the NASPO ValuePoint Cooperative Purchasing Program:**

Approved By: *[Signature]* *SPA* *1/2/19*  
Name: Title: Date

**APPROVED PURSUANT TO ORS 291.047: by Karen Johnson, Sr Assistant Attorney General, via  
email dated December 27, 2018**

## REVISED Exhibit B-1 - Vending Machines



With tens of thousands of machines currently implemented at customer sites, Contractor is the dominant leader in industrial vending. Why? It's a combination of Contractor's innovative technology, Contractor's low-cost, no-risk program, and most

important of all, Contractor's "machine behind the machine" – the thousands of local Contractor personnel making sure each solution is perpetually filled, functioning, and fully optimized for maximum savings.

- Wide variety of machines to support virtually any product needs.
- Dynamic web reporting – view real-time usage data when, where and how you want to see it.
- Machines provided free of charge based on a one-year renewable service agreement **in a form substantially similar to the Master Agreement #8497, Revised Exhibit B-1, Appendix 1, "FAST Solutions Agreement/Locker Lease Government" Form incorporated by reference.**
- Participating Entity's servicing Contractor branch teams monitor and replenish the machines – no paperwork or labor required.
- Dedicated vending specialists work hand-in-hand with Contractor's local branches to analyze usage patterns, suggest areas for improvement, and make sure the solution is driving the results you want to see.
- Contractor's industrial vending solutions have the added benefit of reducing product consumption, typically by 25–35%.

### FAST 5000 & FAST 3000

With tens of thousands of units driving results at customer sites, this is most widely-used industrial technology in the world – a simple, versatile solution to track and control items ranging from PPE to general MRO items. The FAST 3000 is simply a more compact version of the FAST 5000. Both can function as stand-alone solutions or used in conjunction with Contractor's standard lockers.

### Standard Lockers

Contractor's standard (semi-secure) lockers are used to: 1) track and control access to larger-sized consumable products (relying on the user to enter the quantity taken), and 2) automate check-out and return of tools and other assets. They can be used with a standalone controller or in conjunction with a FAST 5000 or FAST 3000 machine.

### FAST 10000SL (Secure Locker) Series

This next-generation technology extends the benefits of vending to four very common (yet traditionally difficult to vend) product types: 1) boxes, 2) cylinders/cans, 3) 'floppy' items (Tyvek suits, belts, hoists, etc.), and 4) loose components (fasteners, fittings, cutting tools, etc.). The machines automatically sense and report the exact amount taken by each user, providing per-item traceability and a frictionless 'grab and go' experience.

### Outdoor Lockers

With a tough steel exterior, ruggedized electronics and optional temperature control, these lockers are built to operate in harsh outdoor environments. Keep tools perpetually stocked, secure and accessible on the jobsite, and automatically track check-out/check-in of expensive tools.

### FAST CT (Cutting Tool) Machines

Designed to dispense and track inserts and round tools, either individually or in pre-determined quantities. The compact design of the machines (combined with the low cost of Contractor's vending program) makes it practical to install multiple point-of-use machines throughout the shop (versus a single centralized unit) for increased productivity.

### FAST Bev



Provides 24/7 access to chilled beverages at the point of use along with reporting to ensure workers are receiving proper hydration during the day – an efficient solution to drive compliance with Participating Entity's hydration program. (Subject to state and local restrictions.)

### **Additional Value Added Solutions**



Contractor's bin stock solutions are a perfect fit for any production and MRO items you cannot dispense out of a vending machine but are still needed on Participating Entity's shelves. Each solution is unique, but all share three common elements:

1. A labeled location and min/max inventory range for each part.
2. A nearby Contractor branch to carry the inventory and make sure you always have just the right amount on hand.
3. Detailed usage reporting by location, clarifying 'how much of which parts should be stocked where.'

#### Manual Solutions:

##### *Contractor Managed Inventory (FMI)*

Save time and money by utilizing Contractor's local experts to manage Participating Entity's bin stock inventory.

- We organize & label new or existing bins, collaborate to establish initial min/max levels and service schedule.
- We visit regularly to monitor & replenish inventory.
- Suggested replenishment orders are submitted, reviewed and approved via Contractor.com.
- Flexible delivery (we deliver to dock or put product away).

##### *FAST Scan*

If you prefer to handle the scanning and ordering internally, Contractor will provide an iOS-based scanning solution for Participating Entity's personnel to quickly generate replenishment orders.

- We organize and label bins and shelving.
- We set up profiles for local users on Contractor.com and provide scanning devices.
- Participating Entity's local personnel determine inventory levels and controls.
- We provide flexible delivery, reporting, and suggestions for improvement.

#### Electronic Solutions:

##### *FAST Scale*

Utilizes weight sensor technology to provide a real-time view of Participating Entity's exact quantity on hand (QOH) – a good fit for critical production parts. Users log onto Contractor.com to view live inventory levels and adjust reorder triggers.

- We install the scale system, organize and label parts.
- An order is automatically generated when stock hits 'min' level.
- View and approve suggested orders via Contractor.com.
- Flexible delivery (we deliver to dock or put product away).

##### *Auto Bin (coming soon)*

Offers a real-time view of Participating Entity's inventory 'health' ('above min,' 'below min' or 'out of stock' – not exact QOH) along with electronic signals prompting replenishment when stock runs low. There are two basic options:

- Infrared Bins – An order is triggered when stock falls below a specified 'water mark' in the bin.
- 2-Bin System – An order is triggered by placing the empty bin next to an RFID chip built into the shelving.



The purest expression of Contractor's local service philosophy is Contractor's Onsite service model, positioning not only Contractor's solutions but also Contractor personnel and Contractor-owned inventory – essentially a dedicated branch – within the walls of

Participating Entity's facilities. Just like vending and bin stocks, this is a natural extension of Contractor's distribution infrastructure and a model we've pioneered in Contractor's industry.

#### The Contractor Onsite Advantage:

- Full program customization based on process mapping exercise.
- Dedicated onsite Contractor team to handle all inventory management functions – the first time Participating Entity's employees touch the product is at the point of use.
- Consigned onsite inventory within the Contractor crib – we own it until it's on Participating Entity's production floor.
- Customized inventory modeling to eliminate stock-outs.
- Immediate access to planned needs (within Contractor's crib) and a variety of spot-buy needs (via Contractor's local branch).
- Detailed, flexible reporting based on Participating Entity's business priorities.
- Deep collaboration, including participation in Kaizen events and other company initiatives. (As we like to say, it's like having a team of supply chain experts on Participating Entity's staff, but not on Participating Entity's payroll.)

#### How Will Participating Entity's Business Benefit?

- ✓ Save money
  - Lower markup structure (reflecting Contractor's lower operating costs vs. Contractor's traditional branch-based service model).
  - Utilize Contractor labor for purchasing, quality inspection, inventory management, etc.
  - Reduce transportation costs through better inventory planning and utilization of Contractor's trucking system.
- ✓ Reduce inventory/working capital
  - Upon moving Onsite, we will sell down Participating Entity's current inventory and replace it with Contractor's own.
  - Moving forward, the inventory in the Contractor crib is on Contractor's books until we move it to the production floor. This transformation creates a dollar-for-dollar reduction in Participating Entity's working capital.
- ✓ Gain efficiency in Participating Entity's facility
  - Simply put, we are experts – with the knowledge, solutions, and systems to run a truly world-class supply chain for Participating Entity's business.
  - Put Contractor's decades of experience to work for you in the areas of quality/source control, OEM critical spares management, inventory planning, point-of-use supply flow, and other critical activities.

Contractor's FAST Solutions agreement(s) (vending, bin stock, onsite) will be executed and/or incorporated in the resulting Participating Addendum with the respective state and/or political subdivision.

#### **Industry-Specific Services and Specialists**

As a complement to Contractor's local branch sales force, Contractor has trained and deployed hundreds of industry specialists to provide high-level support in key areas of Contractor's business, including:

#### Safety

To support Contractor's safety product offering, we've positioned 50+ trained Safety Specialists across the U.S. and Canada. These personnel carry multiple certifications, including Masters in Occupational Health and Safety, QSSP Certification, and OSHA 30-Hour Training. Their job is to identify hazards, document risk factors, garner worker feedback regarding PPE, and ultimately develop a business plan to reduce workplace incidents while maximizing productivity and profits.

Working with Contractor's key safety suppliers, Contractor's Safety Specialists provide trainings and PPE equipment assessments for the following concepts:

- Eye Protection – product selection/rationalization, fit testing
- Hearing Conservation – fit testing
- Face and Head Protection
- Respiratory Protection – qualitative fit testing
- Skin Care Needs Analysis – prevention/reduction of occupational dermatitis, reduction of sick days
- Hand Protection – job-specific assessments, product testing
- Fall Protection – application assessment, harness/lanyard inspection, competent person training
- Ladder Inspection and Certification
- Hoist and Sling Inspection and Certification
- Heat Stress Evaluation – program development
- Spill Containment and Flammable Storage
- Lock Out/Tag Out Program
- AED, BBP, First Aid Training
- ARC Flash Assessments

#### Manufacturing/Metalworking

As part of Contractor's metalworking product expansion, we've stationed 40+ Metalworking Specialists across North America. These individuals have undergone three levels of training, culminating with intensive hands-on training at Contractor's key suppliers' facilities. They work directly with customers to help them select the best products for the job and run them the right way for maximum productivity and cost-effectiveness.

#### Lean Consulting/Six Sigma

Contractor's 70+ employees who have completed Black Belt training and 110+ internally-trained 'Blue Belts' are available to participate in Lean events and support Participating Entity's Lean initiatives. Services include DMAIC Process Mappings – working with Participating Entity's personnel to map the movement of product through Participating Entity's current system and identify areas where costs can be reduced or eliminated. Based on the information gathered, a gap analysis is presented along with a business plan to achieve a specific cost savings goal.

**AMENDMENT No. 3 to  
MASTER AGREEMENT# 8497**

I. This is Amendment No. 3 to Master Agreement #8497 dated April 25, 2018, as amended from time to time ("Master Agreement") between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services office ("DAS PS") on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and Fastenal Company hereafter called "Contractor." This amendment is effective on the date it has been signed by both parties.

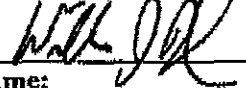
II. The Master Agreement is hereby amended as follows;

Master Agreement #8497 term is hereby extended to June 30, 2023.

III. Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of execution of the Master Agreement.

Certification: By signature on this Amendment, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, for a period of no fewer than six calendar years preceding the Effective Date of this Amendment, Contractor has faithfully has complied with and is not in violation of: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**CONTRACTOR: FASTENAL COMPANY:**

By:  E.V.P. 3/15/2019  
Name: Title: Date

**DEPARTMENT OF ADMINISTRATIVE SERVICES PROCUREMENT SERVICES, On behalf of  
the member states of the NASPO ValuePoint Cooperative Purchasing Program:**

Approved By:  SPA 3/15/19  
Name: Title: Date

**APPROVED PURSUANT TO ORS 291.047: Not Required as per OAR 137-045-0050**

**AMENDMENT No. 4 to  
MASTER AGREEMENT# 8497**

I. This is Amendment No. 4 to Master Agreement #8497 dated April 25, 2018, as amended from time to time ("Master Agreement") between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services office ("DAS PS") on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and Fastenal Company hereafter called "Contractor." This amendment is effective on the date it has been signed by both parties.

II. The Master Agreement is hereby amended as follows;

Contractor requesting price increase. DAS PS has approved these requested changes therefore the Exhibit B Market Basket Price Sheet of the Master Agreement is hereby replaced with the attached revised Exhibit B Market Basket Price Sheet. The prices set forth in the Revised Exhibit B become effective on July 1, 2019.

III. Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of execution of the Master Agreement.

Certification: By signature on this Amendment, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, for a period of no fewer than six calendar years preceding the Effective Date of this Amendment, Contractor has faithfully has complied with and is not in violation of: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;(ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**CONTRACTOR: FASTENAL COMPANY:**

By: [Signature] Executive Vice President 5/15/2019  
Name: Title: Date

**DEPARTMENT OF ADMINISTRATIVE SERVICES PROCUREMENT SERVICES, On behalf of  
the member states of the NASPO ValuePoint Cooperative Purchasing Program:**

Approved By: [Signature] SPA 5/15/19  
Name: Title: Date

**APPROVED PURSUANT TO ORS 291.047: by Karen Johnson, Sr. Assistant Attorney General, via  
email dated May 13, 2019.**



# City of Austin

## Purchasing Office

P.O. Box 1088, Austin, TX 78767

July 8, 2019

SID Tool Co Inc alias MSC Industrial Supply  
Sam Bauserman  
Government Account Executive  
121 Interpark Blvd. Suite 1203  
San Antonio, TX 78216

Dear Sam:

The Austin City Council approved the execution of a contract with your company for industrial supplies and equipment in accordance with TXMAS-18-51V08.

Responsible Department:	Citywide Departments
Department Contact Person:	Sandy Wirtanen
Department Contact Email Address:	<a href="mailto:Sandy.wirtanen@austintexas.gov">Sandy.wirtanen@austintexas.gov</a>
Department Contact Telephone:	512-974-7711
Project Name:	Industrial Supplies and Equipment
Contractor Name:	SID Tool Co Inc alias MSC Industrial Supply
Contract Number:	MA 7400 GC190000004
Contract Period:	7/1/2019 – 6/30/2023
Dollar Amount	\$5,664,000 divided between the contractors
Requisition Number:	RQM 7400 19061400580
Agenda Item Number:	47
Council Approval Date:	June 20, 2019

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Sandy Wirtanen  
Procurement Specialist IV  
City of Austin  
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
SID TOOL CO INC alias MSC INDUSTRIAL SUPPLY ("Contractor")  
FOR  
INDUSTRIAL SUPPLIES AND EQUIPMENT  
MA 7400 GC190000004**

This Contract is between SID Tool Co Inc alias MSC Industrial Supply having offices at San Antonio, TX 78216 and the City, a home-rule municipality incorporated by the State of Texas and is effective on the date signed by an authorized representative of the City. Solicitation requirements are met by using Contractor's TXMAS Contract No. TXMAS-18-51V08.

- 1.1 **This Contract is composed of the following documents:**
  - 1.1.1 This document
  - 1.1.2 Exhibit A, City's Standard Purchase Terms & Conditions
  - 1.1.3 Exhibit B, Non-Discrimination and Non-Retaliation Certification
  - 1.1.4 TXMAS Contract No. TXMAS-18-51V08, including NASPO #8499
- 1.2 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
  - 1.2.1 This document
  - 1.2.2 The City's Standard Purchase Terms & Conditions as referenced in Section 1.1.2
  - 1.2.3 Non-Discrimination and Non-Retaliation Certification as referenced in Section 1.1.3
  - 1.2.4 TXMAS Contract No. TXMAS-18-51V08 as referenced in Section 1.1.4
- 1.3 **Quantity.** There is no guaranteed quantity of goods or services to be purchased pursuant to this contract and there are no minimum order quantities. Quantities will be specified by the City for each Purchase Order.
- 1.4 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect until June 30, 2023 unless TXMAS Contract No. TXMAS-18-51V08 or respective NASPO Contract are terminated. In the event TXMAS Contract No. TXMAS-18-51V08 or respective NASPO Contract are terminated, this Contract will also be terminated.
  - 1.4.1 Prices are firm for the first twelve (12) months.
- 1.5 **Compensation.** The Contractors shall be paid a total Not-to-Exceed amount of \$5,664,000 divided between the Contractors for the Contract term.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**SID TOOL CO INC alias MSC INDUSTRIAL  
SUPPLY**



Signature

Greg Levy

Printed Name of Authorized Person

VP, Category Strategy

Title

07/02/19

Date

**CITY OF AUSTIN**



Signature

Matt Duree

Printed Name of Authorized Person

Procurement Manager

Title

7-3-19

Date

Exhibit A - City's Standard Purchase Terms & Conditions  
Exhibit B - Non-Discrimination and Non-Retaliation Certification



**EXHIBIT A**  
**STANDARD PURCHASE TERMS AND CONDITIONS**  
**INDUSTRIAL SUPPLIES AND EQUIPMENT**

1. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
2. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
3. **WORKFORCE**
  - A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
  - B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
    - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
    - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
  - C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
4. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
5. **INVOICES:**
  - A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
  - B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

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- C. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

**6. PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
- i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**7. FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under

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the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

- B. The making and acceptance of final payment will constitute:
- i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**8. AUDITS and RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

B. Records Retention:

- i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
- ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
- iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

**9. SUBCONTRACTORS:**

- A. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
  - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

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- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

B. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

C. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

10. **WARRANTY-PRICE:**

A. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

B. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

11. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

12. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled Deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables

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from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

- E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
13. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
14. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
15. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
16. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
17. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform



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satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

18. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
19. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
20. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.
21. **INDEMNITY:**
- A. Definitions:
- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
- (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

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- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**
22. **INSURANCE**: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).
- A. General Requirements.
- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
  - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required below to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
  - iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
  - iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
  - v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
  - vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
  - vii. If insurance policies are not written for amounts specified below, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
  - viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
  - ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

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- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

(1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage

ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

(1) The policy shall contain the following provisions:

- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- (b) Contractor/Subcontracted Work.
- (c) Products/Completed Operations Liability for the duration of the warranty period.
- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

(2) The policy shall also include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

23. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the



**EXHIBIT A**  
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Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

24. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
25. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
26. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
27. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
28. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

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29. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
30. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
31. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
32. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
33. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
34. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
35. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
36. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

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**37. DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

38. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

39. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

40. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

**EXHIBIT A**  
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If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

41. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

42. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

43. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

44. **PROHIBITION OF BOYCOTT ISRAEL VERIFICATION**

Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this **Contract**.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.
- B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:
- i. does not "boycott Israel"; and
  - ii. will not "boycott Israel" during the term of this **Contract**.
- C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.



**EXHIBIT B - NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**  
**City of Austin, Texas**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment

should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

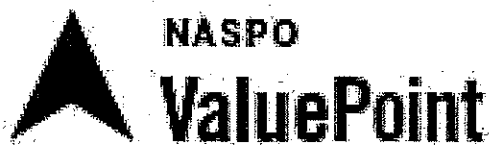
The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 27 day of June, 2019

CONTRACTOR Sid Tool Co., Inc. dba MSC Industrial Supply Co.

Authorized Signature Carol Van Nostrand

Title Mgr. AAP Programs



**NASPO ValuePoint Master Agreement #8499  
for  
Facilities Maintenance and Repair & Operations (MRO) and  
Industrial Supplies**

This NASPO ValuePoint Master Agreement ("Master Agreement") is between the State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS"), as the Lead State, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities and Sid Tool Co. dba MSC Industrial Supply Co. Inc. ("Contractor"). This Master Agreement is effective on the date that it has been signed by the parties and has been approved as required by applicable law ("Effective Date").

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**1. Master Agreement Order of Precedence**

a. Any Order placed under this Master Agreement shall consist of the following documents:

(1) A Participating Entity's Participating Addendum ("PA"), substantially in the form attached hereto as Exhibit A;

(2) NASPO ValuePoint Master Agreement and its exhibits:

Terms and conditions of the Master Agreement, then its exhibits, to be interpreted in the following order:

- Exhibit C - Provisions Required by Federal Law
- Exhibit B - Description of Products, Price, and Services
- Exhibit B-1 - Percentage Off Discounts
- Exhibit E - Contractor Branch and Distribution Center Listings
- eMarket Center Addendum
- Exhibit D - NASPO ValuePoint Detailed Sales Data Report Form
- Exhibit A - Sample Participating Addendum

(3) A Purchase Order issued against the Master Agreement;

(4) Any terms and conditions provided electronically or online or as part of Product materials or descriptions or guidelines; and

(5) Any Contractor's online or third party terms and conditions.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

## **2. Definitions**

**Acceptance** means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

**Acceptance Testing** means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**Contract** means any Order or Purchase Order or other agreed upon ordering instrument issued by a Purchasing Entity under this Master Agreement, together with the terms and conditions of this Master Agreement.

**Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Embedded Software** means one or more software applications which permanently reside on a computing device.

**Environmentally Preferable Product** means products and services that have a lesser or reduced effect on human health and the environment when compared to competing products or services that serve the same purpose.

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** means the State centrally administering any resulting Master Agreement(s).

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the members of the NASPO ValuePoint Cooperative Purchasing Program, and the Contractor, as now or hereafter amended.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract



administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

**Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to later participate in the Master Agreement

**Product** means any equipment, software (including embedded software), supplies, materials, commodities, goods, documentation or other deliverable supplied, offered, or created by the Contractor pursuant to this Master Agreement as described on Exhibits B and B-1. The term Products, supplies, and products are used interchangeably in this Master Agreement.

**Purchasing Entity or Customer** 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, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

**Services** means installation and additional services as defined in the Master Agreement.

### **3. Term of the Master Agreement; Non-exclusivity**

a. The initial term of this Master Agreement is for one (1) year. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. This Master Agreement is not exclusive. Purchasing Entities retain the right to contract for Products or Services or both through any selection process authorized by law, or to perform the Services themselves. Neither NASPO ValuePoint nor the Lead State guarantees that any specific number of Contracts will be issued or that any specific amount of Products or Services will be required.

## **4. Amendments**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State and Contractor.

## **5. Participants and Scope**

a. Contractor may not deliver Products and Services under this Master Agreement until a Participating Addendum, in a form substantially similar to Exhibit A attached hereto and acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions 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, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. 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 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](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this

Master Agreement between the Lead State 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 eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to 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.

g. **Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, 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 prohibit: payments by employees of a Purchasing Entity for Products; sales of 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.

## **6. Administrative Fees**

a. 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 and services 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.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, 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 in subsection 6a 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.

## 7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports:

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. 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).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing 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; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State 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 D.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. 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.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State 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.

## **8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

- a. 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 contract, 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.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that its sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State 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.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.
- g. Contractor agrees, within 30 days of the effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

## **9. NASPO ValuePoint eMarket Center**

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

## **10. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

## **11. Price and Rate Guarantee Period**

All prices and rates set forth in Exhibit B (and the online catalog) must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least (30) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

Contractor shall apply the appropriate discounts as set forth on Exhibit B-1.

## **12. Individual Customers**

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. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **Administration of Orders**

### **13. Ordering**

- a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also 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 Purchasing 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. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
  - (1) The Products, Services or Supplies being delivered;
  - (2) The place and requested time of delivery;
  - (3) A billing address;
  - (4) The name, phone number, and address of the Purchasing Entity representative;
  - (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
  - (6) A ceiling amount of the order for services being ordered; and
  - (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. 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 past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. 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.

#### **14. Shipping and Delivery**

a. 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.

b. 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.

c. 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.

#### **15. Laws and Regulations**

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations, including the Federal Terms and Conditions set forth in Exhibit



C.

## **16. Inspection and Acceptance**

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. 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 the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any Services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of

Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

## **17. Payment**

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges the highest rate permitted by applicable law per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

## **18. Warranty**

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. If Contractor is not the manufacturer of the product Contractor shall pass through all manufacturer's warranty to Purchasing Entity. 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.

## **19. Title of Product**

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

## **20. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its

derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

## **General Provisions**

### **21. Insurance**

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names Oregon, and the Participating States identified in the Request for Proposal as additional insureds, (2) provides that 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.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's

termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

## **22. Records Administration and Audit**

a. The 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 permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), 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 five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

## **23. Confidentiality, Non-Disclosure, and Injunctive Relief**

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be

shown to have had no access to the Confidential Information.

b. **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or 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. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. **Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. **Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include 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. 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 section 23. 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.

## **24. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

## **25. Assignment/Subcontracts**

- a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

## **26. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

## **27. Independent Contractor**

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

## **28. Cancellation**

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

## **29. Force Majeure**

Neither party to this Master Agreement 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. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

## **30. Defaults and Remedies**

- a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. 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 shall 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 these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

### **31. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or

enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

### **32. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

### **33. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, 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.

b. Indemnification – 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.

#### **34. No Waiver of Sovereign Immunity**

In no event shall this Master Agreement, any Participating Addendum or any contract 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. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **35. Governing Law and Venue**

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. 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 Purchasing

Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

### **36. Assignment of Antitrust Rights**

Contractor irrevocably assigns to a Participating Entity who is a state 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 (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

### **37. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

### **38. Leasing or Alternative Financing Methods**

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

#### **Authorized Signatures:**

Contractor: Greg Levy

By: Greg Levy

Title: VP NA + GORT Sales Date: 4/27/18

**The State of Oregon acting by and through its Department of Administrative Services, Enterprise Goods and Services, Procurement Services**

By: [Signature]

Title: State Procurement Analyst Date: 4/27/18

**Approved pursuant to ORS 291.047**

Oregon Department of Justice

By: Karen Johnson via email

Sr. Assistant Attorney General

Date: April 25, 2018

## **eMarket Center Appendix to NASPO ValuePoint Master Agreement**

a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.

b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data [Insert Time Frame Here] to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update every six months to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per quarter. The following conditions apply with respect to hosted catalogs:

(1) Updated pricing files are required by the 1st of the month and shall go into effect in the eMarket Center on the 1st day of the following month (i.e. file received on 1/01/13 would be effective in the eMarket Center on 2/01/13). Files received after the 1st of the month may be delayed up to a month (i.e. file received on 11/06/09 would be effect in the eMarket Center on 1/01/10).

(2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: [www.sciquest.com](http://www.sciquest.com) or call the JAGGAER Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard

Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.

i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.

j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

**(August 2017)**

# Exhibit A to NASPO ValuePoint Master Agreement

## SAMPLE PARTICIPATING ADDENDUM

MASTER AGREEMENT # 8499  
FORM PARTICIPATING ADDENDUM

NASPO ValuePoint  
PARTICIPATING ADDENDUM

Facilities Maintenance and Repair &  
Operations (MRO) and Industrial Supplies  
Lead by the State of Oregon



Master Agreement #: 8499

Contractor: **Sid Tool Co. dba MSC Industrial Supply Co. Inc. (Contractor)**

Participating Entity: **State of XXXXX**

The following Goods or services are included in this Addendum:

- Removable Example: All Goods and accessories listed on the Contractor page of the NASPO ValuePoint website.

The following Goods or services are not included in this Addendum:

- Removable Example: Product modifications.
- Removable Example: Installation services.

### **Master Agreement Terms and Conditions:**

1. Scope: This addendum covers the **Facilities Maintenance and Repair & Operations and Industrial Supplies** led by the State of Oregon for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

*[Removable Instruction: Participating States should ensure that paragraph 2 properly defines the scope of participation. The model language in paragraph enables participation by all political subdivisions, institutions of higher education, and other entities included in the state's statewide contract program.]*

2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *[xxxxxxx]*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:  
Address:  
Telephone:  
Fax:  
Email:

Participating Entity

Name:  
Address:  
Telephone:  
Fax:  
Email:

4. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☐ The following changes are modifying or supplementing the Master Agreement terms and conditions.

*[Removable Instruction: Insert text here to address specific changes to the terms and conditions. Indicate which section numbers of the Master Agreement are modified. If no changes are required, check the box above and delete this paragraph.]*

5. Lease Agreements: *[If applicable, insert a statement about whether or not equipment lease agreement terms and conditions included in the Master Agreement have been approved for use by the Participating State and any restrictions or requirements for the use of the lease agreement language in the Master Agreement. If not applicable, mark Section 5 as "Reserved".]*

6. Subcontractors: All contractors, dealers, and resellers authorized in the State of [xxxxxx], as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.



IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity:	Contractor:
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

*[Additional signatures may be added if required by the Participating Entity]*

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator: Shannon Berry  
Telephone: 775-720-3404  
Email: sberry@naspovaluepoint.org

***[Please email fully executed PDF copy of this document to  
PA@naspovaluepoint.org  
to support documentation of participation and posting in appropriate data bases.]***

## **Exhibit B to NASPO ValuePoint Master Agreement**

### **Description of Products, Price, and Services**

1. Products: Contractor may provide Products and Services from the following categories:

1. Janitorial Equip. & Supplies (does not include Sanitation Cleaning Chemicals)
2. Sanitation Cleaning Chemicals (does not include Janitorial Equipment & Supplies)
3. Fasteners
4. Material Handling
5. Plumbing
6. Power Sources
7. Outdoor Garden
8. Lamps, Lighting, Ballasts
9. HVAC
10. Hand Tools
11. Power Tools (excluding automotive related tools and products)
12. Electrical
13. Paint
14. Security
15. Safety (does not include any public safety equipment)

Purchasing Entities may access Contractor's catalog for above products at link:

<http://bit.ly/2ewZiIt>

2. Services:

2.1 ESB/MBE/WBE/DV & DBE Programs:

Contractor has a proven track record of teaming with certified small businesses and/or diverse business partners. Contractor has worked with the Purchasing Entity to tailor plans in which Contractor can channel business to the appropriate ESB/MBE/WBE/DV & DBE groups to best meet the Purchasing Entities socioeconomic goals.

Contractor is committed to building partnerships with Small Business Programs as part of our State and Federal Government Programs. Contractor has close to 50 Small Business Partners to support Federal "set aside" Contracts and State Programs that work to advance a Small Business Socio-Economic Advantage. Contractor is actively looking for additional partners who can be sustainable partners

with Contractor and strongly support Government Contract Programs that strive to promote Small Business Program initiatives.

2.2 Growth Incentives:

Contractor's pricing includes contract incentives, a fixed category discount structure, market basket pricing that is firm for 12 months, pre-paid standard ground shipping, product warranties, and inventory management solutions.

Contractor will offer a tiered "E-Commerce rebate incentive" to all states that utilize a statewide E-Commerce platform that is integrated with Contractor. This rebate will be tabulated and paid annually after the one-year anniversary of the PA signing. The additional rebates will start at 1% and range up to 3% based on E-Commerce sales volume growth.

2.3 The quality and availability of recycling or other sustainability programs, including products or services offered:

Contractor will work with the Purchasing Entity to better enable the State to achieve sustainability goals established by the State.

2.4 The quality and availability of recycling or other sustainability environmental conservation programs, including products and/or services offered:

Contractor will work closely with the Purchasing Entity to identify and implement environmental conservation programs.

2.5 The number of available green environmentally preferable products that meet the solicitation's specifications available, showing a robust supply of green/sustainable products:

Contractor currently has identified more than 10,000 products considered "green," or as Environmentally Preferable Products (EPP), as well as other products designed to reduce energy consumption, conserve natural resources, and reduce costs. Contractor is continually identifying and adding new EPP items to its inventory. Throughout its catalog and website, green product alternatives are clearly identified in the product descriptions, as noted in **Figure 3**.

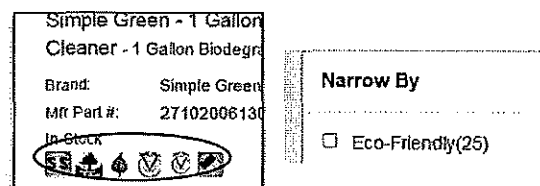


Figure 3: EPP Icons & Search Functions


Contractor is continually identifying and adding new EPP items to its inventory. Throughout its catalog and website, green product alternatives are clearly identified in the product descriptions, as noted in **Figure 3**.

When searching product lines on Contractor's website, the Purchasing Entity has the option to filter the search results for "Eco-Friendly", when applicable, as noted in

### Figure 3.

2.6

#### Recycling Programs:

- Contractor utilizes a global recycling logo for recycled content and CPG items in its catalog/webpage offerings to assist in identifying items made from post-consumer and pre-consumer Recycled Content. The icon provided identifies products meeting these requirements. 
- The cardboard boxes Contractor utilizes to ship orders are made from recycled content which contains a minimum of 25% by weight of post-consumer materials. Contractor can't guarantee its suppliers original packaging will adhere to the above requirements. Contractor will inform its suppliers of Contractor's desires to receive packaging for the products suppliers provide to Contractor that minimizes the use of disposable containers and contains a minimum of 25% by weight of post-consumer materials.
- Contractor works with packaging companies that provide cardboard that is made from recycled material and meets with the Coalition of Northeast Governors requirements to reduce toxic substances in packaging.
- Contractor will work internally with its ES&H and Product Management Teams to support the pick-up of all 30-gallon and 55-gallon drums sold by Contractor to the Purchasing Entities end-users.

2.7

#### Return Policy:

Contractor maintains a 30-day return policy (from date of shipment). In order to return merchandise, The Purchasing Entity must contact Contractor at (800) 645-7270 to obtain a Return Authorization (RA) number. Returns will not be accepted without an RA number.

Returns should be sent back in the original packaging and condition to the original Customer Fulfillment Center with the RA number on the shipping label. An invoice copy or packing slip should also be included.

Any claims for discrepancies in shipment must be made within seven (7) business days of receipt of merchandise. C.O.D. returns will not be accepted. Shipping charges for returned items must be prepaid. A restocking charge may apply.

Note that hazardous materials are not returnable. The Purchasing Entity will be required to inspect all hazardous materials deliveries prior to accepting the delivery. Unaccepted hazardous materials can be returned to Contractor through the freight company that delivered the materials by not accepting the delivery. Once hazardous materials are accepted for delivery, Contractor is unable to take these items back.

Additionally, altered or etched items cannot be returned. Custom cut-to-length products are considered final sales and may not be returned for credit. Unopened computer software can be returned for a credit, but will

only be replaced if considered defective.

In an instance in which a defective item is identified by the Purchasing Entity, a replacement order will be entered immediately. The replacement will be subject to standard lead times if not stocked.

Some manufacturers may provide warranties beyond Contractor's 30-day policy. Please see the individual manufacturer for additional warranty information.

2.8 Distribution points:  
Contractor operates five (5) distribution centers located in Atlanta, GA; Columbus, OH; Elkhart, IN; Harrisburg, PA; and Reno, NV. Contractor maintains over ninety (90) branches.

2.9 Scope of geographical coverage offered:  
Contractor currently services approximately 360,000 customers in all 50 states through its broad network of five domestic Customer Fulfillment Centers (CFCs) located regionally near Columbus, OH; Harrisburg, Pennsylvania; Atlanta, Georgia; Elkhart, Indiana; and Reno, Nevada.

2.10 Accurate and meaningful marking of green products in the on-line catalog when applicable:  
Contractor provides accurate and meaningful labeling of environmentally preferable products offered in Contractor's on-line catalog through the green leaf symbol to the right.



Biodegradable

### 3. Additional Services;

3.1 Contract Management Retail Store/Will Call Availability:  
Contractor branches are open 8:00am to 5:00pm Monday through Friday. See Exhibit E Contractor's listing of Branches and Distribution Centers incorporated by reference.

Contractor has trained and capable employees that will interact with the Purchasing Entity and has regional, senior, and executive management responsible for supporting the Purchasing Entity.

3.2 Reporting Capabilities Disaster Recovery Plan:  
Contractor will provide reporting/analysis. Contractor will work with the Purchasing Entity to provide access to the Purchasing Entities order information, through various history reports, spend analysis, pricing audit, and various other reports.

Given this importance of data for information and reporting, it is critical that Contractor stores this information well.

Contractor shall backup Data and transaction logs so that information can be restored in the event of hardware or other failure.

3.3 Web based ordering System:  
Contractor will provide landing pages for Participating States which include contract information, pricing and Contractor's contacts for the territory.

3.4 Contractors point of contact information:

Contractor has a dedicated toll-free number, 888-MSD-9722 for the Participating States, Participating Entity, and the Purchasing Entities will have access to all the required ordering methods, including the following:

- Online via [mscdirect.com](http://mscdirect.com)
- eProcurement options (Punchout / Hosted Catalogs)
- Telephone: 800-645-7270
- Facsimile: 800-255-5067
- Email: [nvp@mscdirect.com](mailto:nvp@mscdirect.com) or [cust\\_service@mscdirect.com](mailto:cust_service@mscdirect.com)

Sid Tools Co. dba MSC Industrial Supply Co. Inc.  
75 Maxess Road  
Melville, NY 11747

3.5 E- Commerce and Web Catalog Capabilities:

(1) Display contract pricing and multiple search options from narrow options to specific search criteria:

Accessible from any computer with an Internet connection, [www.mscdirect.com](http://www.mscdirect.com) features an extremely versatile search function. Suggestions will appear as the Purchasing Entities type in terms, and the Purchasing Entity may also search by entering any of the following:

- Keyword
- MSC Part Number
- Manufacturer Part Number
- Customer Part Number
- Competitor Part Number
- NSN Numbers
- UPC Numbers
- Brand

Contractor's web site also offers a 24-month rolling history with the ability to search for past orders by Purchase Order Number, Buyer, Ship-to Location, and Date.

(2) On-line ordering capability:

Contractor's user-friendly and easy-to-navigate website, [mscdirect.com](http://mscdirect.com),

gives the Purchasing Entity full access to every product Contractor has available, and allows the Purchasing Entity to conveniently manage their entire account(s) online.

The website [mscdirect.com](http://mscdirect.com) is available 24 hours a day, seven days a week, and includes a robust suite of features to make the ordering process as easy as possible, and allows for the Purchasing Entity to have complete self-service control of their account(s). The Purchasing Entity can access pricing, see real-time availability of products available online and in Contractor's Big Book, place orders, track packages, and obtain technical data, such as SDS sheets. After orders have shipped, the Purchasing Entity can view copies of the invoice and print them for convenience. Contractor also features its Express Check-Out feature for added efficiency and time savings.

Website offers numerous time-saving and cost-saving tools, the website can help the Purchasing Entity create an efficient and productive procurement environment.

(3) Order status and order tracking capabilities:

The Purchasing Entity will be able to check order status and track their orders using a variety of methods, including calling the local Branch and/or Sales Associate; contacting a Call Center, or visiting [mscdirect.com](http://mscdirect.com). Contractor communicates order status, including tracking and back-order information through several methods:

- Order Confirmation: The Purchasing Entity can either request an e-mail be sent by Contractor confirming the order, or the Purchasing Entity can view their order status online at [mscdirect.com](http://mscdirect.com).
- Notice of Back Order: Back order information for online orders is available immediately as a result of real-time inventory information. Orders placed over the phone will also include instantaneous feedback on stock availability from the MSC Associate. Any orders that are faxed or sent via other electronic platforms will receive an e-mail notification or phone call as soon as the back order situation is identified.
- Shipping Notifications / Tracking: The Purchasing Entity may call to track any order shipped via UPS or FedEx, or log on to [mscdirect.com](http://mscdirect.com) for real-time UPS package tracking. If delivery of an order is delayed or incomplete, Contractor will call each of its affected Purchasing Entity, advising the Purchasing Entity of the delay and when the shipment will actually arrive.
- Substitutions: Contractor does not automatically send the Purchasing Entity a substitute item if the original item is unavailable. If Contractor cannot ship the item the Purchasing Entity originally wanted, Contractor would contact the Purchasing Entity and provide alternate item suggestions that would meet the purchasing Entities needs and then let the Purchasing Entity decide accordingly.

(4) Order history:

Contractor provides order history reports for self-auditing purposes. These reports are available by utilizing the My Account page function on Contractor's website. A history of recent orders will appear, enabling the Purchasing Entity to quickly find items previously purchased, track shipments, or reprint invoices. The Purchasing Entity can search orders placed in the past year using order number, purchase order number, or packing slip number.

Additionally, order history may be obtained by calling any of Contractor's Call Centers, local Branches, or Outside Sales Associates.

(5) Allow users to develop personal lists and profiles, and a secure means for storing procurement card information:

Once the Purchasing Entity logs in to the secure site, the Purchasing Entity can streamline the procurement process using Lists for repeat buys. With one central location for all of the Purchasing Entities Lists, this section makes it very easy to find their frequently purchased items. Additionally, the Purchasing Entity may add items to their lists from the item description page.

"My Profile" and "My Preferences" allows the Purchasing Entity to modify account information, including phone number, e-mail address, and password. The Purchasing Entity may also set change notification preferences to control the e-mail communications received, set up checkout preferences for a more expeditious checkout process, and manage e-mail notifications for orders.

The Purchasing Entity can securely store Procurement Card Information under the "Billing Information" section of Contractor's website, and set default billing address and card information.

(6) Online help to use site should be available at minimum during normal work hours.

Contractor's customer service will be available to the Purchasing Entity in a variety of ways:

- For all web and e-commerce questions, the Purchasing Entity can call (800) 753-7970. Representatives are available Monday through Friday, 7 a.m. to 10 p.m. EST.
- The Purchasing Entity can also utilize the "Chat" function on the web during the above-mentioned business hours.
- For general Customer Service, the Purchasing Entity can contact the dedicated NASPO ValuePoint team at (888) MSC-9722, or call any of Contractor's Call Centers at (800) 645-7270. Contractor's Call Centers are available Monday through Friday, 7 a.m. to 11 p.m. EST, and Saturday, 8 a.m. to 5 p.m. EST.



- The Purchasing Entity can email Contractor at **nvp@mscdirect.com** or **cust\_service@mscdirect.com** and receive assistance within 24 hours.
- Additionally, Contractor's local branch offices are typically open Monday through Friday, 8 a.m. to 5 p.m. local time, but hours may vary.

(7) Technical data, illustrations, Material Safety Data Sheets, parts availability, and access to web-based product sourcing is required: Contractor's item details support all these requirements. A complete list of technical and manufacturer specifications is featured in an easy-to-read chart format. All item availability is displayed in real time. For items with Safety Data Sheets, an icon is featured where the Purchasing Entity can view and print SDS documents. See SDS sheets at <https://www.mscdirect.com/customer-service/sds>

If the Purchasing Entities are unable to find the SDS they are looking for, they may contact Contractor's Environmental Safety & Health (ES&H) helpline at 1-800-753-7927, Monday through Friday, 7am-11pm, EST, and Saturday 8am-5pm, EST. The Purchasing Entity may also call our 24-hour SDS hotline at 1-866-910-0719 for assistance.

(8) Allow the Purchasing Entity to view on line Contractor's product availability by location:

All inventory on Contractor's website is displayed in real-time so the Purchasing Entity will immediately be aware of stock availability. Orders will ship from Contractor's Customer Fulfillment Center with the available product. If a qualified, in-stock order is placed by the 8 p.m., EST, national cut-off time, the order is guaranteed to ship the same day. Contractor's Same Day Shipping Guarantee maintains a 99% fill rate.

(9) Ability to block certain items or categories.

Contractor has the capability to block certain items and categories, and provides this functionality to Participating States.

(10) Ability to accept "P-Card" payments.

Contractor currently partners with MasterCard®, Visa®, and American Express®, and Contractor provides Level I, II, and III line item detail reporting for transactions.

### 3.6

Electronic Data shall be stored for each Participating State in the following ways:

Contractor encrypts all sensitive data while in transit or at rest. Contractor utilizes TLS for in-transit encryption and AES256 for all at-rest encryption.

Contractor's ERP system stores all Purchasing Entities and transaction information in a single database. Standard database access techniques

are utilized to ensure that the correct information is being processed for the correct Purchasing Entity. At no time does any Purchasing Entity have access to any other Purchasing Entities information.

Once a Purchasing Entity logs in to the Contractor's website, the same data access techniques are used to restrict the Purchasing Entities specific information to only that information that belongs to the logged-in Purchasing Entity.

The primary Contractor computing environment is located in a third-party Tier 2+ Data Center. This data center has redundant critical power and cooling components to provide select maintenance opportunities and an increased margin of safety against business disruptions that would result from site infrastructure equipment failures. The redundant components include power and cooling equipment such as UPS modules, chillers or pumps, and engine generators. In the unlikely event of a disaster at this facility, Contractor also has a redundant data center approximately 1,000 miles away from the primary site that is synchronized in near-real-time, and would be activated to maintain business operations. This redundant solution is tested at least once a year.

Contractor has implemented many advanced technologies and industry best practices to safeguard its own systems, and the information of the Purchasing Entity and suppliers against a wide variety of cybersecurity threats.

Contractor's cybersecurity processes and capabilities cover threat prevention, detection, response, and remediation. A robust cybersecurity training and awareness campaign, two-factor authentication for external network access, state-of-the-art firewalls, web application firewalls, tokenization, and encryption of sensitive data are just a few of the security measures we have in place.

Authentication to any Contractor technology resource requires a unique user ID and complex password. Current policies require passwords to expire and be changed quarterly. The level of access to the systems is reviewed on an annual basis and is governed by the role of the Purchasing Entity in the organization. Critical systems such as order entry are audited annually.

The above technologies are architected and configured in a layered security and risk-based manner. Contractor's security posture is constantly monitored both internally and externally by independent third parties BitSight.

Since the nature of cybersecurity is constantly evolving, Contractor also takes proactive measures to improve its security by testing its own technology, processes, and procedures with annual, blind, third-party penetration testing to nation and state attack standards.

### 3.7

#### Forced Substitutions:

Contractor will not conduct forced substitutions. As a result of real-time

inventory information, stock availability and back order information for online orders is immediately available. Orders placed over the phone will also include instantaneous feedback on stock availability from the MSC Associate. Any orders that are faxed or sent via other electronic platforms will receive an e-mail notification or phone call as soon as the back-order situation is determined.

Contractor's customer service or sales representatives would advise the Purchasing Entity of a product discontinuation at the time of order. If Contractor discontinues the item from its catalog, but still has a relationship with the manufacturer, Contractor can still get the item for the Purchasing Entity. However, the product may not ship from Contractor's inventory. Contractor can suggest substitutions of equal or better value that can ship the next day. If the manufacturer discontinues an item, Contractor will do its best to find a replacement product from the vendor or provide an alternative choice.

In the event a supplier is planning to discontinue an item from Contractor's catalog, Contractor requires that the vendor support its needs until the publishing of the new catalog. Contractor would then remove the item from the catalog and insert a substitution wherever possible. Notes would be entered into Contractor's system so that Sales Associates can communicate these changes to the Purchasing Entity when the product is ordered. Sometimes the supplier / manufacturer discontinuing the item is not willing to manufacture the item for the life of Contractor's current catalog. In these instances, Contractor would work with them to identify an immediate replacement or a similar item.

Contractor does not automatically send the Purchasing Entity a substitute item if the original item is unavailable. If Contractor can't ship the item the Purchasing Entity originally wanted, Contractor will contact the Purchasing Entity and provide an alternate item suggestion that will meet the need and then let them decide accordingly.

### 3.8

#### Contract Management:

Contractor will assign a team of State Account Managers as main points of contact for the Master Agreement for each of their respective territories. These State Account Managers will manage the components of Master Agreement in their area, including customer support, training, logistics, reporting, and integration.

The Contractor's State Account Managers will conduct Quarterly Business Reviews with each of their Participating States. During these reviews, the State Account Manager will provide sales reporting, sale trends, best demonstrated practices, and cost-saving documentation, and discuss areas of improvement for the upcoming quarter.

The Purchasing Entity will also receive support from our local branches. Local branches and Associates would be assigned upon award. The following are some of the roles who would service Participating State sites:

- Branch Sales Manager – Would lead the local operations and support team; ensuring Master Agreement and Participating Addendum compliance.
- Outside Sales Associate (OSA) – The OSA's primary focus is sales support and bringing solutions that can help drive cost savings and inventory reduction, as well as the coordination of all sourcing and purchasing needs. The OSA will also serve as project manager for the local account relationship.
- Solutions Services Representative (SSR) – The SSR provides vending, VMI, and other inventory management support. The SSR interfaces with end users on the production floor to provide support for our products and to identify continuous improvement activities.
- MSC Branch Support Associates – At the branch location, there are additional assets that can augment, replace and substitute the current support team when necessary. Additional available assets include Inside Sales Associates to assist with tactical sourcing and Senior Specialists to support project based sourcing.

Contractor's will provide all training specific to contract utilization, online ordering, product delivery, product returns, EPPs and customer service processes at no additional cost.

### 3.9

#### Shipping:

All shipments are to be delivered directly to the purchasing department/division address. All shipments shall include a packing label that includes at a minimum the following information on the outside of the package:

Purchasing Entities;  
Delivery Address;  
Purchasing entity and floor;  
Contact; and  
Telephone number.

A packing slip shall also be included with each shipment, which shall include at a minimum the following information in no particular order:

Line item description;  
Date ordered;  
Quantity ordered;  
Quantity included in shipment;  
Any backordered items;  
Unit Price and extension;  
Number of parcels;  
Purchase Order Number;  
Purchasing entity name; and  
F.O.B. Destination.

Contractor ensures that its Packing Slip references information important to the Purchasing Entity, including all of the fields identified above.

### 3.10

#### Reporting Capabilities:

The Contractor shall provide information on all reports that are available without charge, to include a brief description of the report and the frequency. Additional states may have additional reporting requirements. Contractor commits to providing consolidating reporting to the Purchasing Entity at frequencies they require or as requested.

Contractor can meet all the reporting requirements noted in the Master Agreement terms and conditions at the requested frequencies and at no additional cost.

Contractor's program also includes its extensive reporting capabilities with results typically being delivered at its joint Business Reviews. Using data collection, standardized templates, and approved methods, Contractor will be able to identify key business metrics so that Contractor can provide the most current and accurate information. Contractor can generate reports detailing purchasing history at individual facilities, along with other numerous spend and savings reports. Reports can also be customized and delivered at a frequency (monthly, quarterly, etc.) that best suits Participating State's needs. Sample reporting includes:

- Freight Report by Location
- Freight Report by Ship via Summary
- Order Source Detail
- Order Source Summary
- Procurement Card Report Detail
- Procurement Card Report Summary
- Performance Ratings
- Spend and Savings by Product Line
- Spend and Savings by Location

Additional data points include the following:

DATA POINTS		
CUSTOMER ACCOUNT	INVOICE DATE	MSC BASE ITEM NUMBER
ORDER NUMBER	ITEM ORDER NUMBER	CONTACT NAME
CUSTOMER AKA NUMBER	CATALOG PAGE	CATALOG PRICE
CUSTOMER P.O.	EXTENDED ITEM PRICE	ITEM DESCRIPTION
BRAND NAME	EXTENDED CATALOG PRICE	CUSTOMER NAME
LINE ITEM QUANTITY	LINE ITEM CATEGORY	NET PRICE
LINE ITEM DESCRIPTION	ORDER DATE	ORDER SOURCE
PAYMENT METHOD	HAZMAT ITEM	UNIT OF MEASURE
INVOICE NUMBER	ORDER QUANTITY	PACKING SLIP NUMBER
PRODUCT LINE	SALES REPRESENTATIVES	SHIP TO ADDRESS
SHIP TO NUMBER	NSN NUMBER	MERCHANDISE TOTAL
FREIGHT AMOUNT	SALES TAX	MERCHANDISE + FREIGHT + TAX
INVOICE NUMBER	CONTACT NAME	INVOICE DATE

Reports provided in Excel format unless otherwise noted. Contractor does not charge money for any reports to the Purchasing Entity, and will work with each request to try to meet the Purchasing Entities needs if the information is not already available.

The Purchasing Entity has access to orders placed via the website or through punch out on their account on the web.

### 3.11 Sustainability/Environmental Practices;

Contractor's Environmental Compliance and Sustainability Department has been collecting data on Contractor's Energy Use, Water Use and Waste Streams for the past three years and reporting this information to Sr. Management. At this time, there is no formal Sustainability program on Contractor's website. Provided below is the Environmental section of Contractor's Code of Conduct which is available on Contractor's website.

#### (1) Environmental Standards:

Environmental responsibility is an integral part of our business mission. Associates at all levels are required to follow Company procedures designed to meet the standards set by applicable environmental regulations. Contractor will strive to minimize environmental impacts from its operations to the communities in which it operates as well as natural resources. Contractor will actively work to continuously improve its environmental protection programs. Contractor's environmental standards are:

- Environmental Permits and Reporting: Contractor will obtain, maintain and keep current all required environmental permits and registrations necessary to conduct its business and will follow their operations and reporting requirements.

- **Pollution Prevention and Resource Reduction:** Contractor will strive to reduce or eliminate waste(s) at their source by means of process modifications, maintenance and facility processes, material substitution, conservation, and the recycling and re-use of materials.
- **Hazardous Substances:** Chemical and other materials posing a hazard if released to the environment are to be identified and managed to ensure their safe handling, movement, storage, recycling or reuse and disposal.
- **Product Content Restrictions:** Contractor will not knowingly sell non-compliant products to the Purchasing Entity. Contractor will maintain an Environmental Health and Safety department to review products and evaluate their compliance with all applicable environmental laws and regulations regarding prohibition or restriction of specific substances, including labeling laws and regulations for recycling and disposal.

**Promote the Development and Sale of Environmentally Friendly Products:** Contractor will strive to identify and provide items to the Purchasing Entity that will help protect the environment through the use of less toxic or harmful ingredients and/or items that will help to reduce consumption of natural resources. These may include, but will not be limited to, products that help to reduce energy consumption, provide water conservation, have been made with or from recyclable materials, or can be recycled after use.

**(2) Product Take Back/End of Life:**

Contractor offers products that assist with the Purchasing Entity end-of-life and recycling needs. Provided below is a sampling of products Contractor offers to promote and assist the Purchasing Entity with their recycling programs. The recycling packs are prepaid recycling packages that include recycling containers, poly liners, instructions, terms and conditions, prepaid shipping label and a certificate of recycling.

MSC ITEM NUMBER	PRODUCT DESCRIPTION
86043874	2-FOOT BOX FOR MIXED LAMPS
86043825	4-FOOT BOX FOR LINEAR FLUORESCENT LAMPS
86043841	4-FOOT LARGE BOX FOR LINEAR FLUORESCENT LAMPS
86043890	3.5-GALLON PAIL FOR BATTERY RECYCLING
86043858	5-GALLON PAIL FOR MIXED LAMP RECYCLING
86043882	5-GALLON PAIL FOR BALLAST RECYCLING

**3.12**

**Vending Machines:**

Contractor offers Vending Machine Offerings. Contractor's ControlPoint Inventory Management Vending Solutions are provided for the Purchasing Entities searching for innovative technology to help streamline processes and improve cost savings, industrial vending is an ideal solution. Contractor's vending programs are proven to solve the numerous inefficiencies inherent to the management of indirect spend

items on a shop floor, such as too little or too much inventory, and the management of multiple purchase orders.

When the Purchasing Entity chooses to implement one of Contractor's vending solutions, Contractor will execute an extensive, in-depth process beginning with site analysis all the way through to monitoring the continuing performance of its solutions after installation so that Contractor can ensure complete satisfaction. Contractor process includes:

1. Discovery and Assessment – Contractor's supply chain experts will partner with local teams to thoroughly analyze the existing environment, and identify any individual location challenges. Upon completion of the site analysis, Contractor's experts will determine the appropriate solution for the Purchasing Entities unique needs and review recommendations with the Purchasing Entity.
2. Finalize a Contract or Purchase Order – Contractor and the Purchasing Entity will work together to document its understanding of the project and create the final Contract or Purchase Order, which includes a detailed Item Plan outlining all the products to be included in the units.
3. Installation and Training – Every step of the implementation process will be closely monitored by Contractor's expert implementation team to ensure that the Purchasing Entities program is properly installed and fully functional. Contractor's highly qualified team will provide hands-on training to the dispensing unit's operators and managers so that the system can be up and running in as little time as possible and working to create a more efficient, cost-effective environment. Prior to implementation closure, the Purchasing Entities Sign-Off Form will be presented and reviewed to ensure full satisfaction.
4. Monitoring and Support – Once the Purchasing Entities vending solutions are fully functional; Contractor provides ongoing support by its Vending Service Center, which functions very similarly to local Branch support. Along with phone-in customer service support, the Purchasing Entity will have access to Product and Technology Teams and Vending Equipment inventory monitoring. Contractor will monitor the products in our Inventory Management Vending Solutions Programs.

Contractor's Vending team will monitor the inventory and will work with the Purchasing Entity to identify areas of opportunity to decrease and/or add inventory based on usage patterns.

Contractor will also assist in any necessary equipment reconfiguration. However, Contractor can maximize the program's flexibility through the training of the Purchasing Entity during the implementation process. Contractor will train the Purchasing Entity on the necessary



reconfiguration process so that changes can be made as expeditiously as possible.

Contractor's Implementations Specialists and Technicians are factory-trained, and maintain a high working knowledge of all MSC equipment. Additionally, Contractor's local Branch support teams receive the same training. Contractor's units have a proven track record in their performance; however if a challenge does arise, Contractor will respond with professional knowledgeable service technicians in order to make any necessary repairs with minimal disruption. Contractor's specialists will devote as much time as necessary to ensure successful implementation.

Contractor's structured support team begins with its Vending Service Center. With a single call or email to its Vending Service Center the Purchasing Entity receives assistance with assorted questions and challenges. Contractor's experienced Vending Service Center team can troubleshoot issues, add items to the machine, price review and more. If the issue cannot be solved from Contractor's Vending Service Center support team, it would be escalated to the local Branch level where an on-site visit will be arranged to aid with additional troubleshooting and repair expertise. If a challenge extends beyond Contractor's vast resources, its equipment manufacturer is available to assist in any capacity required.

3.13 Additional Value added solutions:

Solar Powered Equipment:

Contractor carries solar powered equipment (e.g., item numbers 40627127 and 40627119) identified by the Energy Conservation icon provided. The Purchasing Entity may search for solar products on its website by utilizing its keyword search feature available on its website.

3.14 Sourced Products, if applicable:

3.14.1 Contractor sourced products is a product which is not currently listed in the suppliers contract catalog or on-line ordering system at the time of order receipt but is capable of being supplied through the Contractor, if applicable to a Participating State's rules.

If an unavailable product is requested, Contractor's knowledgeable Associates will immediately search products to suggest a comparable alternative of equal or higher value. If it isn't available from Contractor's stock for same-day shipping, its sales team will source the product as quickly as possible, purchasing it when the customer places the order. If Contractor is not a distributor for a particular product, Contractor has the capability to procure the product by purchasing through an authorized distributor. Contractor has also cross-referenced many of its products and brands with industry brands Contractor doesn't offer so Contractor can provide the Purchasing Entity alternate choices of equal or higher

value.

As part of Contractor's vast sourcing capabilities, Contractor can also source custom, built-to-specification parts upon request.

3.14.2 If the Contractor is capable of supplying sourced products they must be direct line extension products which have a similar item to an established product category and the Contractor must already have a publically recognized business partnership with the "brand," if applicable to the applicable Participating State's rules.

Contractor confirms compliance with this requirement.

### 3.15 Disaster Recovery:

Contractor shall provide an emergency preparedness plan to aid States during an emergency or disaster recovery with specifics as to response time, supplies availability and other goods and services that is offered.

A Participating State may request hard copy and link to Contractor's emergency preparedness plan on its website.

Contractor to provide lead state with hard copy and website link no later than July 15, 2019.

## EXHIBIT B-1 to NASPO ValuePoint Master Agreement

Percentage Off Discount:

### Percentage off list per awarded category

Contractor shall apply the following discount percentages to all purchases:

Category	Discount
1. Janitorial Equipment & Supplies (does not include Sanitation Cleaning Chemicals)	20%
2. Sanitation Cleaning Chemicals & Supplies (does not include Janitorial Equipment & Supplies)	20%
3. Fasteners	25%
4. Material Handling	20%
5. Plumbing	20%
6. Power Source	25%
7. Outdoor Garden	20%
8. Lamps & Lighting and Ballasts	20%
9. HVAC	20%
10. Hand Tools	25%
11. Power Tools (excluding automotive related tools and products)	18%
12. Electrical	20%
13. Paint	20%
14. Security	25%
15. Safety (does not include any public safety equipment)	25%

The Contractor's Percentage off list discount will not be reduced throughout the life of the Master Agreement except, Contractor can however provide a higher percentage off list discount by providing the Lead State a thirty (30) day notice and Lead State approving the discount.

## **Exhibit C to NASPO ValuePoint Master Agreement PROVISIONS REQUIRED BY FEDERAL LAW**

Without limiting the generality of Section 15 of the Master Agreement, if applicable, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements. For purposes of this Master Agreement, all references to federal laws are references to federal laws as they may be amended from time to time.

**1. Equal Employment Opportunity.** If this Master Agreement, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**2. Clean Air, Clean Water, EPA Regulations.** If this Master Agreement, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Participating Entity or Purchasing Entity, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

**3. Energy Efficiency.** Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163).

**4. Truth in Lobbying.** The Contractor certifies, to the best of the Contractor's knowledge and belief that:

4.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

4.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL,

"Disclosure Form to Report Lobbying" in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this Master Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Master Agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**5. HIPAA Compliance.** If the work performed under this Master Agreement are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Contractor agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, work performed under this Master Agreement is covered by HIPAA. Contractor shall comply and cause all subcontractors to comply with the following:

5.1. Privacy and Security Of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and Participating Entity or Purchasing Entity for purposes directly related to the provision of services to clients which are funded in whole or in part under this Master Agreement. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Participating Entity or Purchasing Entity Privacy Rules, or the Participating Entity or Purchasing Entity Notice of Privacy Practices, if done by Participating Entity or Purchasing Entity. A copy of the most recent Participating Entity or Purchasing Entity Notice of Privacy may be obtained from Participating Entity or Purchasing Entity

5.2. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with Participating Entity or Purchasing Entity in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement with Participating Entity or Purchasing Entity and shall comply with the Participating Entity or Purchasing Entity EDI Rules.

5.3. Consultation and Testing. If Contractor reasonably believes that the Contractor's or the Participating Entity's or Purchasing Entity's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the Participating Entity's or Purchasing Entity's HIPAA officer. Contractor or Participating Entity or Purchasing Entity may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the Participating Entity's or Purchasing Entity's testing schedule.

5.4. If Contractor is deemed to be a business associate of Participating Entity or Purchasing Entity under HIPAA's Privacy Rule, 45 CFR Parts 160 and 164, Contractor hereby provides Participating Entity or Purchasing Entity with satisfactory assurances that if it receives from Participating Entity or Purchasing Entity or any trading partner any protected health information of any individual, it shall maintain the security and confidentiality of such information as required by the HIPAA's Privacy Rule, and other applicable laws and regulations. Without limiting the foregoing, Contractor agrees that:

5.4.1. Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by this Master Agreement or as required by law;

5.4.2. Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Master Agreement;

5.4.3. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Master Agreement;

5.4.4. Contractor will report to Participating Entity or Purchasing Entity any use or disclosure of PHI not provided for by this Master Agreement of which Contractor becomes aware;

5.4.5 Contractor agrees to ensure that any agents, including subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Contractor with respect to such information;

5.4.6. Contractor shall make available to Participating Entity or Purchasing Entity such information as they may require to fulfill their obligations to account for disclosures of such information;

5.4.7. Contractor shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the Participating Entity or Purchasing Entity or trading partner (or created or received by Contractor on behalf of Participating Entity or Purchasing Entity or trading partner) available to Participating Entity or Purchasing Entity and to the Secretary of the United States Department of Health and Human Services, for purposes of determining Participating Entity's or Purchasing Entity's or trading partners' compliance with HIPAA; and

5.4.8. If feasible, upon termination of this Master Agreement, Contractor shall return or destroy all PHI received from Participating Entity or Purchasing Entity or trading partners (or created or received by Contractor on behalf of Participating Entity or Purchasing Entity or trading partners) that Contractor still maintains in any form, and shall retain no copies of such information or, if return or destruction is not feasible, Contractor shall continue to extend the protections of this Master Agreement to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

Subject to the foregoing restrictions, Participating Entity or Purchasing Entity agrees that Contractor may use such PHI in the process of providing transaction mapping, trading partner profiling and training and mentoring services for Participating Entity or Purchasing Entity and trading partners under this Master Agreement.

**6. Resource Conservation and Recovery.** Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

**7. Substance Abuse Prevention and Treatment.** Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 USC 300x through 300x-64).

**8. Audits.** Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

**9. Debarment and Suspension.** Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

**10. Medicaid Compliance.** To the extent Contractor performs any work whose costs are paid in whole or in part by Medicaid, Contractor shall comply with and cause its subcontractors to comply with the federal and State Medicaid statutes and regulations applicable to the work, including but not limited to:

10.1. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to Participating Entity or Purchasing Entity, the Secretary of Health and Human Services, and as otherwise directed by Participating Entity or Purchasing Entity;

10.2. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;

10.3. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and

10.4. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.

Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with

the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

**11. Americans with Disabilities Act.** Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work.

**12. Pro-Children Act.** Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

**13. Federal Tax Information.** Contractor shall comply with the provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. §552a et. seq. related to federal tax information.

**14. Educational Records.** Contractor shall comply with the provisions of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).



**EXHIBIT D to NASPO VALUEPOINT MASTER AGREEMENT  
NASPO ValuePoint DETAILED SALES DATA REPORT FORM**

Field Name	Field Description
CONTRACTOR	The awarded Contractor's name
CONTRACTOR CONTRACT NUMBER	Lead State assigned contract number (using Lead State's numbering protocol)
STATE	State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)
CUSTOMER TYPE (SEGMENT)	State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]
BILL TO NAME	Customer (agency) Bill to name
BILL TO ADDRESS	Customer (agency) Bill to address
BILL TO CITY	Customer (agency) Bill to city
BILL TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
SHIP TO NAME	Customer (agency) Ship to name
SHIP TO ADDRESS	Customer (agency) Ship to address
SHIP TO CITY	Customer (agency) Ship to city
SHIP TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
ORDER NUMBER	Contractor assigned order number
CUSTOMER PO NUMBER	Customer provided Purchase Order Number
CUSTOMER NUMBER	Contractor assigned account number for the purchasing entity
ORDER TYPE	Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]
PO DATE (ORDER DATE)	(mm/dd/ccyy)
SHIP DATE	(mm/dd/ccyy)
INVOICE DATE	(mm/dd/ccyy)
INVOICE NUMBER	Contractor assigned Invoice Number
PRODUCT NUMBER	Product number of purchased product
PRODUCT DESCRIPTION	Product description of purchased product

UNSPSC		Commodity-level code based on UNSPSC code rules (8 Digits)
LIST PRICE/MSRP/CATALOG PRICE		List Price - US Currency (\$99999.999) [determined by industrial practice for each contract - uniform for each contract]
NASPO ValuePoint PRICE		NASPO ValuePoint Price- US Currency (\$99999.999)
QUANTITY		Quantity Invoiced (99999.999)
TOTAL PRICE		Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$999999999.999)
Discount Percentage		Percent off of List Price- example=20%
NASPO ValuePoint ADMIN FEE		Administrative Fee based on Total Price - US Currency (\$999999.999)
VAR/Reseller/Distributor		If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located
Optional		More information

[illegible]

## **EXHIBIT E to NASPO ValuePoint Master Agreement**

### **Contractors Branch Listings**

**Exhibit E is incorporated by reference.**

**AMENDMENT No. 1 to  
MASTER AGREEMENT# 8499**

**I.** This is Amendment No. 1 to Master Agreement #8499 dated April 27, 2018, as amended from time to time ("Master Agreement") between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services office ("DAS PS") on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and Sid Tool Co. dba MSC Industrial Supply Co. Inc. hereafter called "Contractor." This amendment is effective on the date it has been signed by both parties.

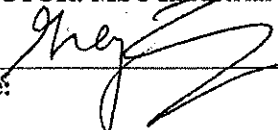
**II.** The Master Agreement is hereby amended as follows;

Master Agreement #8499 term is hereby extended to June 30, 2023.


**III.** Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of execution of the Master Agreement.

Certification: By signature on this Amendment, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, for a period of no fewer than six calendar years preceding the Effective Date of this Amendment, Contractor has faithfully has complied with and is not in violation of: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**CONTRACTOR: MSC Industrial Supply CO.:**

By:  VPCustomer Development + Strategic Accounts 3/18/19  
Name: Title: Date

**DEPARTMENT OF ADMINISTRATIVE SERVICES PROCUREMENT SERVICES, On behalf of  
the member states of the NASPO ValuePoint Cooperative Purchasing Program:**

Approved By:  SP1A 3/18/19  
Name: Title: Date

**APPROVED PURSUANT TO ORS 291.047: Not Required as per OAR 137-045-0050**

**AMENDMENT No. 2 to  
MASTER AGREEMENT# 8499**

**I.** This is Amendment No. 2 to Master Agreement #8499 dated April 27, 2018, as amended from time to time ("Master Agreement") between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services office ("DAS PS") on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and Sid Tool Co. dba MSC Industrial Supply Co. Inc. hereafter called "Contractor." This amendment is effective on the date it has been signed by both parties.

**II.** The Master Agreement is hereby amended as follows;

Contractor requesting price increase. DAS PS has approved these requested changes therefore the Exhibit B Market Basket Price Sheet of the Master Agreement is hereby replaced with the attached revised Exhibit B Market Basket Price Sheet. The prices set forth in the Revised Exhibit B become effective on July 1, 2019.

**III.** Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of execution of the Master Agreement.

Certification: By signature on this Amendment, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, for a period of no fewer than six calendar years preceding the Effective Date of this Amendment, Contractor has faithfully has complied with and is not in violation of: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;(ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**CONTRACTOR: MSC Industrial Supply CO.:**

By: [Signature] VPCustomer Dev Strategic Accounts 5/15/19  
Name: Title: Date

**DEPARTMENT OF ADMINISTRATIVE SERVICES PROCUREMENT SERVICES, On behalf of  
the member states of the NASPO ValuePoint Cooperative Purchasing Program:**

Approved By: [Signature] SPA 5/15/19  
Name: Title: Date

**APPROVED PURSUANT TO ORS 291.047: by Karen Johnson, Sr. Assistant Attorney General via  
email dated May 13, 2019.**

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Sandy Wirtanen 512-974-7711	<b>PM Name/Phone</b>	
<b>Sponsor/User Dept.</b>	Citywide	<b>Sponsor Name/Phone</b>	
<b>Solicitation No</b>	Cooperative	<b>Project Name</b>	TXMAS Contract with Fastenal and MSC Industrial Supply
<b>Contract Amount</b>	\$1M annually	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source*			
<input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input checked="" type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement			
<input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
This will be a Cooperative contract with Fastenal and MSC for industrial supplies and equipment to repair and maintain City facilities and equipment.			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
Previous contract, GC13*008, was also through a Cooperative and did not have goals.			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
54523 - Impact tools - 100%			
Sandy Wirtanen		4/5/2019	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	4/5/2019	<b>Date Assigned to BDC</b>	4/8/2019
<b>In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

## GOAL DETERMINATION REQUEST FORM

**This determination is based upon the following:**

- |  |   |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input type="checkbox"/> No availability of M/WBEs                  |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities    |
| <input type="checkbox"/> Sole Source                               | <input type="checkbox"/> Other                                      |

*If Other was selected, provide reasoning:*

**MBE/WBE/DBE Availability**

N/A

**Subcontracting Opportunities Identified**

N/A

Ahide Garcia

**SMBR Staff**

**Signature/ Date**

*Ahide Garcia*

04/08/19

**SMBR Director or Designee**

**Date**

4-9-19

**Returned to/ Date:**