Participating Addendum
for
Facilities MRO and Industrial Supplies
between
State of South Dakota – Contract 17897
and
Fastenal Company

This Participating Addendum is entered into by the **State of South Dakota** ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number MA 758 2500000414, executed by Contractor and the Commonwealth of Kentucky ("Lead State") for Facilities MRO and Industrial Supplies ("Master Agreement"):

Fastenal Company ("Contractor")
2001 Theurer Blvd.
Winona, MN 55987

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Zach Wise
Fastenal Company
nasposupport@fastenal.com
833-790-9932

Participating Entity's contact for this Participating Addendum is:

Andy Mobley
Purchasing Specialist
andy.mobley@state.sd.us
605-773-4278

II. TERM. This Participating Addendum is effective as of November 1, 2024, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

III. PARTICIPATION AND USAGE. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

The Contractor may, at the Contractor's discretion, extend pricing from this agreement to Indian tribal governments and non-profit organizations in **South Dakota**. Any sales made to Indian tribes and non-profit organizations from this agreement shall be included in any required reports and shall be subject to the NASPO VALUEPOINT administrative fee.

IV. GOVERNING LAW. The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.

V. SCOPE. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.

a. Products. All products available through the Master Agreement (Categories 1-15, Nationwide) may be offered and sold by Contractor to Purchasing Entities.

b. Services. All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.

c. Contractor Partners. All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

d. Equipment Leasing. Any lease entered into by a State agency, institution, public university, officer, board, or commission through this agreement may utilize the lease terms included in the Master Price Agreement at their own discretion. Leases that require authorization by the Office of Procurement Management will be reviewed and approved on a lease by lease basis.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum. The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

VI. ORDERS. Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.

Reports must be submitted to the Participating Addendum Contact Person in the same manner and format as required by NASPO ValuePoint.

Administrative Fee of 1% paid on annual contract spend.

Growth Incentive of 1% fee paid on annual sales growth.

Annual sales growth is defined as (contract spend in excess of previous year's contract spend). Eligible annual activity includes all product spend (gross product spend less product returns) and excludes freight (if charged) and sales taxes (if charged). The benchmark for year 1 will be determined by the eligible activity (irrespective of contract vehicle) for the previous contract year.

Purchasing entity will receive an activity report to support all calculations. Fastenal reserves the right to hold Growth Incentive Program payments until open invoices for the subject contract year are paid. Growth Incentive Program payments shall not automatically roll over in the event that Buyer continues to purchase product from Seller upon expiration of the Agreement. The Growth Incentive Program period terminates at the end of the Agreement term and may only be extended by a written agreement signed by both parties. In the event that the underlying purchase Agreement is prematurely terminated by the Buyer, for any reason, Growth Incentive Program credits accrued in the current contract year shall be forfeited by the Buyer.

The Growth Incentives earned by the member will be paid annually within the first contract quarter following each consecutive contract year in the form of a single disbursement.

Solutions Incentive: 2% fee paid on all sales through Fastenal Vending Solution or Onsite Program.

VIII. FEDERAL FUNDING REQUIREMENTS. 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. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

IX. INFORMATION TECHNOLOGY STANDARDS.

Fastenal Company will create and maintain an internet-based electronic ordering system for the use of all users of the state contract. The electronic ordering system must facilitate a "punch-out" catalog with the State's current e-procurement system, EasyPurchase hosted by ESM Solutions Inc. The electronic ordering site must be updated and fully operational January 1, 2025. The "punch-out" catalog will list current pricing and only products available through the Master Agreement.

X. ATTACHMENTS. This Participating Addendum includes the following attachments:

a. Attachment A State of South Dakota Contractual Provisions.

XI. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Zach Wise
Fastenal Company
naspsupport@fastenal.com
507-313-7206

For Participating Entity:

Andy Mobley
Purchasing Specialist
andy.mobley@state.sd.us
605-773-4278

XII. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR:

Signature

William Drazkowski
Printed Name

Executive Vice President
Title

11/18/2024
Date

PARTICIPATING ENTITY:

Signature

Steven L. Berg
Printed Name

Director, Office of Procurement Management
Title

11/20/2024
Date

ATTACHMENT A

STATE OF SOUTH DAKOTA
CONTRACTUAL PROVISIONS

1. It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of this contract into which this attachment is incorporated.

2. All contractual agreements are subject to, governed by, and construed in accordance with the laws of the State of South Dakota. Any action, suit, or other proceeding under, pursuant to, or governed by this contract shall be brought and maintained in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

3. The vendor/contractor agrees that the continuation of this contract is dependent on receipt of an appropriation from the South Dakota Legislature. In the event that the Legislature does not provide an appropriation of funds for any fiscal year, or if funds become unavailable because of federal funds reduction, then and in that event, this contract shall be null and void and shall expire at the end of the last fiscal year in which funding shall be available for this contract to the State and the State agency involved. Vendor/contractor agrees that a termination for lack of funds pursuant to this paragraph shall not result in a claim against the State, nor against any State agency, agent, officer, or employee.

4. Neither the State of South Dakota, nor any State agency, agent, officer, or employee shall hold harmless or indemnify any vendor/contractor for any loss or damage beyond the amounts provided for tort claims against the State by South Dakota law. Neither the State, nor any State agency, agent, officer, or employee shall assume liability to any third person by means of a contract or agreement. The State has not, and shall not, waive or give up any immunity or protection afforded to the State of South Dakota by the Eleventh Amendment to the Constitution of the United States, and no provision of this agreement shall be interpreted as, or be deemed as, a waiver of such Amendment, nor of any immunity afforded by it to the State of South Dakota.

5. Vendor/contractor agrees to comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing goods or services pursuant to this agreement, and vendor/contractor will be solely responsible for obtaining current information about such requirements.

6. Notwithstanding any language to the contrary, no interpretation shall be allowed that would find the State of South Dakota or any State agency has agreed to any binding arbitration, nor to the payment of damages or liquidated damages upon occurrence of a contingency. The State of South Dakota does not and shall not agree to pay any attorneys' fees or late charges in excess of those provided for in the South Dakota Prompt Payment Act, SDCL chapter 5-26.

7. This contract shall not require the State of South Dakota to purchase any insurance, nor shall the State of South Dakota be obligated to provide for any self-insurance beyond that required by South Dakota law relating to tort claims. Vendor/contractor shall be required to provide adequate insurance for: (1) Commercial General Liability; (2) Professional Liability; (3) Business Automobile Liability; and (4) Workers' Compensation, all as required by South Dakota Law, as otherwise set out in this Agreement, or adequate to cover all risks of performance under this agreement.

8. Vendor/contractor hereby agrees to indemnify and hold the State of South Dakota, and its agents, agencies, officers, and employees, harmless from and against third-party actions, suits, damages, liability, or other proceedings that may arise as the result of performing services or providing goods under this contract, as set forth in the Master Agreement. This provision does not

require vendor/contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its agents, agencies, officers, or employees.

9. Vendor/contractor hereby agrees to defend the State of South Dakota and save the State of South Dakota, its agents, agencies, officers and employees, harmless from third party claims alleging infringement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of this agreement, or which the vendor/contractor is not the patentee, assignee, or licensee, as set forth in the Master Agreement.

10. Compliance with SDCL Ch 5-18A. Contractor certifies and agrees that the following information is correct:

    The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

    It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

    The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

11. Pursuant to Executive Order 2020-01, for contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars ($100,000.00) or more, by signing this Agreement vendor/contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Vendor/contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

12. Contractor (i) understands that neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or

within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to any Agreement entered into as a result of this RFP. By signing an Agreement pursuant to this RFP, offeror hereby certifies that the Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

13. Vendor/contractor will not provide to the State any computer or telecommunication hardware or video surveillance hardware, or any components thereof, or any software that was manufactured, provided, or developed by a covered entity. As used in this paragraph, "covered entity" means the following entities and any subsidiary, affiliate, or successor entity and any entity that controls, is controlled by, or is under common control with such entity: Kaspersky Lab, Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any entity that has been identified as owned or controlled by, or otherwise connected to, People's Republic of China. Vendor/contractor will immediately notify the State if vendor/contractor becomes aware of credible information that any hardware, component, or software was manufactured, provided, or developed by a covered entity.