

**Participating Addendum Number 255-2-Fastenal
for
Facilities MRO and Industrial Supplies
between
State of North Dakota
and
Fastenal Company**

This Participating Addendum is entered into by State of North 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")
1030 S 9th Street
Louisville, KY 40203

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Zach Wise
Government Sales Manager
nasposupport@fastenal.com
833-790-9932

Participating Entity's contact for this Participating Addendum is:

Seth Westby
State Procurement Officer
swestby@nd.gov
(701) 328-1953

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below 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.
- 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 with the exclusion of those identified here:
- i. Products available on other North Dakota State Contracts
 - ii. Ballasts and lamps
 - iii. Office supplies
 - iv. Disposable gloves
 - v. Vehicle batteries

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- vi. Dry cell batteries
- vii. Warning lights
- viii. Warewashing
- ix. Janitorial supplies
- x. Janitorial and food service disposable products
- xi. Trash bags
- xii. Any orders over \$200,000

b. Services. All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities with the exclusion of those identified in Attachment B.

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.

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 State Contract Number: 255-2 as well as the Lead State Master Agreement No. MA 758 2500000 414 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.** Quarterly reports will be provided by Contractor to Participating Entity showing a summary of each sale to include Purchasing Entity, description and amount.
- 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. ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Attachment A: Participating Entity Modifications and Additions to Master Agreement Terms and Conditions.
 - b. Attachment B: Participating Entity Product and Service Exclusions

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

For Contractor:

Zach Wise
Government Sales Manager
nasposupport@fastenal.com
(833) 790-9932

For Participating Entity:

Seth Westby
State Procurement Officer
swestby@nd.gov
(701) 328-1953

XI. 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:

Handwritten signature of William Drazkowski in black ink.

Signature

William Drazkowski

Printed Name

Executive Vice President

Title

12/26/2024

Date

PARTICIPATING ENTITY:

Handwritten signature of Seth Westby in black ink.

Signature

Seth Westby

Printed Name

State Procurement Officer

Title

1/3/2025

Date



**Attachment A – Participating Entity Modifications and Additions to
Master Agreement Terms and Conditions**

- I. **Taxpayer ID:** Contractor's federal employer ID number is: **41-0948415**.
- II. **Coterminous:** The term of this Participating Addendum shall be coterminous with the Commonwealth of Kentucky Contract Master Agreement Number MA 758 2500000414.
- III. **Confidentiality (Replaces Master Agreement Section 14.2.1):** Contractor shall not use or disclose any information it receives from Participating Entity under this Participating Addendum that Participating Entity has previously identified as confidential or exempt from mandatory public disclosure except from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by Participating Entity. Participating Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code (N.D.C.C) ch. 44-04. The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond the term of this Participating Addendum.
- IV. **Compliance with Public Records Laws (Replaces Master Agreement Section 14.2.2):** Under the North Dakota public records law and subject to the Confidentiality clause of this Participating Addendum, certain records may be open to the public upon request.
 - a. Public records may include: (a) records Participating Entity receives from Contractor under this Participating Addendum, (b) records obtained by either Party under this Participating Addendum, and (c) records generated by either Party under this Participating Addendum.
 - b. Contractor agrees to contact Participating Entity immediately upon receiving a request for information under the public records law and to comply with Participating Entity's instructions on how to respond to such request.
- V. **Spoliation:** Contractor shall notify Participating Entity of all potential claims that Contractor is aware of that arise as a result of Contractor's performance under this Participating Addendum. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Participating Entity the opportunity to review and inspect the evidence, including the scene of an accident.
- VI. **Cooperative Purchasing Contract:** This Participating Addendum is a cooperative purchasing contract established pursuant to N.D.C.C. § [54-44.4-13](#). This Participating Addendum is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C chapter [39-04.2](#), and the International Peace Garden. Participation in this open-ended contract is not mandated; therefore, the estimated volume of this Participating Addendum is not known.
- VII. **Governing Law and Venue:** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

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- VIII. **Indemnification (Supplements Master Agreement Section XII):** In addition to any indemnity obligations found within the Master Agreement, Contractor agrees that any attorney appointed to represent the Participating Entity must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.
- IX. **Insurance (Replaces Master Agreement Section 13.3.1):** Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- The insurance coverages listed above must meet the following additional requirements:
- 1) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the Participating Entity. The policies shall be in form and terms approved by the Participating Entity.
 - 2) Contractor shall furnish a certificate of insurance to the undersigned Participating Entity representative prior to commencement of this Participating Addendum.
- Contractor shall provide a certificate of insurance prior to commencement of this Participating Addendum and any required endorsements as soon as practicable electronically to:
- State Procurement Office, Seth Westby
swestby@nd.gov
- 3) Failure to provide insurance as required in this Participating Addendum is a material breach of contract entitling Participating Entity to terminate this Participating Addendum immediately.
 - 4) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.
- X. **Alternative dispute resolution – Jury Trial:** Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial.
- XI. **Attorney Fees:** In the event a lawsuit is instituted by Participating Entity to obtain performance due under this Participating Addendum, and Participating Entity is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay Participating Entity's reasonable attorney fees and costs in connection with the lawsuit.
- XII. **Nondiscrimination and Compliance with Laws:** Contractor agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil

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rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Contractor shall have and keep current all licenses and permits required by law during the Term of this Participating Addendum all licenses and permits required by law.

Contractor is prohibited from boycotting Israel for the duration of this Participating Addendum. (See N.D.C.C § 54-44.4-15.) Contractor represents that it does not and will not engage in a boycotting Israel during the term of this Participating Addendum. If Participating Entity receives evidence that Contractor boycotts Israel, Participating Entity shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Contractor has fewer than ten full-time employees.

Contractor is prohibited from boycotting Israel for the duration of this Participating Addendum. (See N.D.C.C § 54-44.4-15.) Contractor represents that it does not and will not engage in a boycotting Israel during the term of this Participating Addendum. If Participating Entity receives evidence that Contractor boycotts Israel, Participating Entity shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Contractor has fewer than ten full-time employees.

XIII. Termination (Supplements Master Agreement Section 14.6):

Termination for Lack of Funding or Authority

Participating Entity, by written notice to Contractor, may terminate the whole or any part of this Participating Addendum under any of the following conditions:

- a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- b. If federal or state laws or rules are modified or interpreted in a way that the services or good are no longer allowable or appropriate for purchase under this Participating Addendum or are no longer eligible for the funding proposed for payments authorized by this Participating Addendum.
- c. If any license, permit, or certificate required by law or rule, or by the terms of this Participating Addendum, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Participating Addendum under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

- XIV. Severability:** If any term of this Participating Addendum is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Participating Addendum did not contain that term.

- XV. Applicable Law and Venue (Replaces Master Agreement Section 14.12):** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court

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of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

- XVI. **State Audit:** Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Participating Addendum are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Contractor shall maintain these records for at least three (3) years following completion of this Participating Addendum and be able to provide them upon reasonable notice. Participating Entity, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination.