Participating Addendum Number 398 – Toro
for
Ground Maintenance Equipment
between
State of North Dakota
and
The Toro 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 61514, executed by Contractor and the Commonwealth of Virginia ("Lead State") for Ground Maintenance Equipment ("Master Agreement"):

The Toro Company ("Contractor")
8111 Lyndale Avenue South
Bloomington, MN 55420

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Brooke Carey
Government Contracts Manager
brooke.carey@toro.com
952-887-8082

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 or October 23, 2024, whichever is later, 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 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.

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 must include the Participating State Contract number #398 as well as the Lead State Master Agreement No. 61514. 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

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

For Contractor:	For Participating Entity:
Brooke Carey Government Contracts Manager brooke.carey@toro.com 952-887-8082	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: **PARTICIPATING ENTITY:**

Brooke Carey
Signature

Brooke Carey
Printed Name

Contracts Manager
Title

2/11/2025
Date

Seth Westby
Signature

Seth Westby
Printed Name

State Procurement Officer
Title

2/6/2025
Date

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

1. Coterminous: The term of this Participating Addendum shall be coterminous with the Commonwealth of Virginia Master Agreement Number RFP61514.

2. Confidentiality: 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.

3. Compliance with Public Records Laws: 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.

   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.

   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.

4. 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.

5. 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 ch. 39-04.2, and the International Peace Garden. Participation in this open-ended Participating Addendum is not mandated; therefore, the estimated volume of this Participating Addendum is not known.

6. 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*.

7. Indemnification: 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.

8. Insurance: 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 $2 million per occurrence/$2 million general aggregate. Contractor shall provide certificate of insurance and any endorsements to participating entity electronically to:
   Name: Seth Westby
   Email Address: swestby@nd.gov
   Email Subject Line: Certificate of Insurance – Grounds Maintenance Equipment #398

9. 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.

10. 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.

11. 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 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 Contract.

    Contractor is prohibited from boycotting Israel for the duration of this Contract. (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 Contract. 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 (10) full-time employees.

    Contractor's failure to comply with this section may be deemed a material breach by Contractor entitling Participating Entity to terminate in accordance with the Termination for Cause section of this Contract.

12. Payment: Participating Entity shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct invoice.

13. Purchasing Card: Participating Entity may make payment using a government credit card. Contractor will accept a government credit card without passing the processing fees for the government credit card back to participating entity.

14. Payment of Taxes: Participating Entity is not responsible for and will not pay local, state, or federal taxes. Participating entity sales tax exemption number is E-2001. Participating entity will furnish certificates of exemption upon request by the Contractor.

15. Termination for Convenience or by Mutual Agreement: This Contract may be terminated by Participating Entity upon thirty (30) days' written notice to Contractor. This Contract may be terminated by mutual consent of both Parties executed in writing.

16. Early Termination in the Public Interest: Participating Entity is entering this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, Participating Entity, in its sole discretion, by written notice to Contractor, may terminate this Contract in whole or in part.

17. Termination for Lack of Funding or Authority: Participating Entity by written notice to Contractor, may terminate the whole or any part of this Contract 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 goods are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

    c) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

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

18. Termination for Cause: Participating Entity may terminate this Contract effective upon delivery of written notice to Contractor, or any later date stated in the notice:

    a) If Contractor fails to provide services or goods required by this Contract within the time specified or any extension agreed to in writing by Participating Entity; or

    b) If Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

    The rights and remedies of Participating Entity provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

19. Force Majeure: Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If Contractor is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then Participating Entity may seek all available remedies, up to and including termination of this

Contract pursuant to its Termination Section, and Participating Entity shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

20. Independent Entity: Contractor is an independent entity under this Contract and is not a Participating Entity employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Contract, except to the extent specified in this Contract.

21. Severability: If any term of this Contract 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 Contract did not contain that term.

22. 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 Contract 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 Contract 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.