

NASPO ValuePoint
PARTICIPATING ADDENDUM
WALK-IN BUILDING SUPPLIES
Led by the State of Utah



MASTER AGREEMENT #: MA087

Contractor: **LOWE'S COMPANIES, INC DBA LOWE'S HOME CENTERS, LLC**

Participating Entity: **STATE OF NORTH CAROLINA**

The following products or services are included in this contract portfolio:

- All items in any of the Lowe's retail stores.

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the *Walk-in Building Supplies* led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
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 North Carolina. 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:	LOWE'S COMPANIES, INC DBA LOWE'S HOME CENTERS, LLC
Address:	1605 Curtis Bridge Road, Wilkesboro, NC 28697-2231
Telephone:	(888) 310-7791
Fax:	(877) 793-8455
Email:	naspo@lowes.com

Participating Entity

Name:	Grant Braley, Category Manager
Address:	116 West Jones Street, Raleigh NC 27603
Telephone:	(919) 807-4519
Fax:	(919) 807-4510
Email:	grant.braley@doa.nc.gov

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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.

NORTH CAROLINA TERMS AND CONDITIONS
MANDATORY FOR PARTICIPATION AGREEMENTS

- a. **ADVERTISING:** Vendor agrees not to use the existence of this Contract or the name of the State of North Carolina or any of its sub-units in or as part of any commercial advertising or marketing of products or services.
- b. **GOVERNING LAWS:** Solely with respect to matters or disputes related to or arising from purchase orders issued hereunder by governmental entities within the State of North Carolina, this agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
- c. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records, solely to the extent they relate to transactions and matters involving North Carolina's participation in the Contract, to verify accounts and data affecting fees or performance under the Contract, as provided in G. S. §143-49(9).
- d. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
- e. **COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.



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- f. **CERTIFICATIONS:** Vendor certifies to each of the following:
- a). that this bid is submitted competitively and without collusion, as required by G.S. 143-54;
 - b). that none of its officers, directors or controlling owners has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2);
 - c). that it is not an ineligible vendor as set forth in G.S. 143-59.1;
 - d). that no employee or agent of Vendor has offered, and no State employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32; and
 - e). that it, and each of its sub-contractors under this contract, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system, as required by G.S. §143-48.5.
 - f). that the Vendor is not an ineligible vendor due to being identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran, in accordance with the Iran Divestment Act of 2015, G.S. 147-86.55 et seq. The Treasurer's Divestment List may be reviewed at: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.asp>.
- g. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in this contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the State under applicable law.
- h. **ELECTRONIC PROCUREMENT:**
- (a) Purchasing shall be paid exclusively by cash, check or State procurement card (credit card). No purchase orders received or generated from the State's electronic e-Procurement system shall be accepted or filled by Vendor under this contract.
 - (b) In the event that Vendor accepts or fills a purchase order received from the State's electronic e-Procurement system, regardless of the prohibition thereof, Vendor shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding any applicable sales tax) of all goods included in such purchase order. This fee applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
 - (c) Vendor or its Authorized Dealer or Reseller, as applicable, will be invoiced monthly for the State's transaction fee, if any, by its operations contractor. The transaction fee shall be based on a) purchase activity for the prior month generating a purchase order by the State's e-Procurement system, or b) purchases for which the e-Procurement system indicates have been paid. Unless the operations contractor receives written notice from

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the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. Pursuant to G.S. 147-86.23, the Service will charge interest and late payment penalties on past due balances. Interest shall be charged at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due. The late-payment penalty will be ten percent (10%) of the account receivable. Within thirty (30) days of the receipt of invoice, Vendor may dispute in writing the accuracy of an invoice. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The operations contractor shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice. The operations contractor's contact information may be obtained at <http://eprocurement.nc.gov/ContactUs.html>.

(d) VENDOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ANY DEALER OR RESELLER INVOLVED IN PERFORMANCE UNDER THIS CONTRACT IN THE EVENT THAT SUCH SUB-CONTRACTOR OR DEALER DEFAULTS ON PAYMENT.

- i. **PURCHASE ORDERS:** To issue a Purchase Order, payment must take place on a Lowe's Account Receivable ("LAR"). A LAR is a form of proprietary credit provided by a third party creditor ("Creditor"), currently Synchrony Bank. Creditor is responsible for the collection of fees and interest on LAR accounts.

Aside from product, delivery, or shipping information, any terms, conditions, representations or certifications included on a Purchase Order or similar document ("Additional Terms") are void and superseded by the terms and conditions of this Master Agreement and this Participating Addendum. Lowe's gives notice of objection to all Additional Terms and specifically rejects all Additional Terms as a material alteration to this Master Agreement and this Participating Addendum. Lowe's may accept Additional Terms in its sole discretion after receiving separate, advance written notice of the Additional Terms, provided that no Additional Terms are valid until the buyer receives a signed acknowledgement from Lowe's agreeing to the Additional Terms. Lowe's retains sole discretion to refuse any Purchase Order that 1) contains Additional Terms or 2) does not meet Lowe's payment or tender type requirements.

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j. **QUARTERLY REPORTS:**

The Vendor shall provide Quarterly Management Reports to the designated Contract Specialist and other ad hoc reports to the designated Contract Specialist and/or Buyers. The Quarterly Management Report shall include the following information as stated here: Quarterly Management Reports and submitted to the following e-mail address (PCReports@doa.nc.gov) and copy the Contract Specialist. Issues identified by the Vendor related to Vendor performance or the State's usage of the Contract also shall be addressed in these reports.

The reports should be well organized and easy to read. The Vendor shall submit these reports electronically using Microsoft Excel and, as needed, either Microsoft PowerPoint or Word. The Vendor shall submit the Quarterly Management Reports by the 15th of the month following the end of the quarter. The Quarterly Management Report delivery schedule is included below:

- **By October 15th:** Q1 Quarterly Management Report for July – September
- **By January 15th:** Q2 Quarterly Management Report for October – December
- **By April 15th:** Q3 Quarterly Management Report for January – March
- **By July 15th:** Q4 Quarterly Management Report for April – June.

This schedule aligns with the State's fiscal year. If the Contract start date does not align with the start of a quarter the initial Quarterly Management Report will be for the period from the Contract start date to the end of the initial quarter. Additional related sales information and/or details on user purchases may be required by the State and must be supplied within 30 days upon request. A template for such report may be provided by the State at its discretion.

5. **Lease Agreements: Reserved.**

6. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of North Carolina, 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.


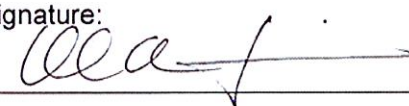
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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: STATE OF NORTH CAROLINA	Contractor: LOWE'S COMPANIES, INC DBA LOWE'S HOME CENTERS, LLC
Signature: 	Signature: 
Name: GRANT F. BRALEY	Name: Michael A. Tummillo
Title: CATEGORY MANAGER	Title: SVP Pro Sales
Date: July 27, 2017	Date: July 27, 2017

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.]