

PARTICIPATING ADDENDUM
to NASPO ValuePoint
Immediate Need Aftermarket Automotive Parts
Administered by the State of Oklahoma
With
The Pep Boys – Manny, Moe & Jack of Delaware, Inc.
Master Agreement No. 0900006747
And
The State of Colorado
CO Price Agreement #2017-0000-0000-0000-0152

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the “Participating Addendum”), is entered into by and between **The Pep Boys – Manny, Moe & Jack of Delaware, Inc.** (the “Contractor”), and the State of Colorado (the “State”). This Participating Addendum covers participation in the **Immediate Need Aftermarket Automotive Parts** led by the State of **Oklahoma** (the “Master Agreement”), for use by State agencies and other entities located in the State authorized by the State’s statutes to utilize State contracts with the prior approval of the Chief Procurement Officer. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit B, Products and Price List**.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

To the extent not modified by this Participating Addendum, all terms and conditions of the Master Agreement shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

4. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing, without a formal amendment to this Participating Addendum no later than 5 days following the date on which the change occurs. The Contractor’s primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:

Tara Larwick, State Procurement
Administrator
State Purchasing and Contracts Office

1525 Sherman Street
3rd Floor
Denver, CO 80203
3030-866-4005
tara.larwick@state.co.us

Primary Contact for the Contractor:

Cyrano Parsard, Director of Major
Accounts
The Pep Boys-Manny, Moe & Jack of
Delaware, Inc.
901 N. Lenola Rd.

Moorestown, NJ 08057-1042
(P) 954-235-0813 (F) 800-723-1377
Cyrano.parsard@pepboys.com

5. SUBCONTRACTORS

The Contractor may only use Subcontractors, as defined in Exhibit A, under this Participating Addendum if the State has provided written approval for the Contractor to use that Subcontractor. All such approved Subcontractors authorized in the State of Colorado, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to the State and any Purchasing Entity in the State. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

6. ORDERS



Any Order placed by the State or a Purchasing Entity in the State of Colorado for a Good or Service available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement and this Participating Addendum unless the parties to the Order agree in writing that another contract or agreement applies to such Order or the terms of that Order control to the extent that they conflict with the terms of the Master Agreement or this Participating Addendum.

7. ATTACHED EXHIBITS

All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:


- A. Colorado Special Provisions in §14 of Participating Addendum Exhibit A, State Specific Terms
- B. The provisions of the main body of this Participating Addendum
- C. All other sections of Participating Addendum Exhibit A, State Specific Terms
- D. Participating Addendum Exhibit B, Products and Price List

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

<p style="text-align: center;">CONTRACTOR</p> <p>The Pep Boys - Manny, Moe & Jack of Delaware, Inc. By: Wade Sharp Title: President of Commercial Sales</p> <p> _____ *Signature</p> <p>Date: <u>8/29/17</u></p>	<p style="text-align: center;">STATE OF COLORADO</p> <p>John W. Hickenlooper, Governor Department of Personnel and Administration State Purchasing Office June Taylor, Executive Director</p> <p> _____ By: John Chapman, State Purchasing Manager</p> <p>Date: <u>9-8-17</u></p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§24-30-202 C.R.S. requires the State Controller to approve all State Contracts. This Participating Addendum is not valid until signed and dated below by the State Controller or an authorized delegate.

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By:  _____</p> <p>Name: <u>CLARK M. BOLSER</u></p> <p>Effective Date: <u>9/11/17</u></p>
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PARTICIPATING ADDENDUM EXHIBIT A STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, 24-101-101 *et. seq.* C.R.S., and its associated rules.

2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Chief Procurement Officer”** means the position described in the Colorado Procurement Code and its implementing regulations.
- B. **“Confidential Information”** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.* C.R.S. (“CORA”).
- C. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- D. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any services to be rendered by Contractor in connection with the Goods.
- E. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- F. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- G. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work. The term “Subcontractor” includes, but is not limited to, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- H. **“Work”** means the delivery of the Goods and performance of the Services described in this Participating Addendum.

Any term used in this Participating Addendum that is defined in another Exhibit or in the main body of this Participating Addendum shall be construed and interpreted as defined in that portion of this Participating Addendum.

3. TERM

A. Initial Term - Work Commencement

The Parties’ respective performances under this Participating Addendum shall commence on the Effective Date and shall terminate on the date on which the NASPO ValuePoint Master Agreement terminates, unless this Participating Addendum is terminated earlier as described in this Participating Addendum or the State cancels its participation as described in the Master Agreement (the “Term”).

B. Extension of Term

If the term of NASPO ValuePoint Master Agreement is extended for any reason, then that extension shall be automatically incorporated in this Participating Addendum and the Term of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

4. PAYMENTS

A. Purchasing Entity Payments

Each Purchasing Entity will make its own payments under any Order that it enters into. The State shall not be liable to the Contractor for any payments due under any Order unless the State is a party to that Order.

B. Acceptance of the Purchase Card (P-Card) requires that no charges be posted to the P-Card prior to the shipping of goods. Only the total for goods shipped may be charged to the P-Card upon Shipping. All back-ordered goods cannot be charged until received by the supplier and shipped to the State of Colorado end user. Upon shipment, an itemized invoice must be emailed to the order requester within 2 business days of the charge.

All P-Card invoices must be processed separately from other payment methods and include invoicing elements, which Contractor agrees to abide by at all participating CONTRACTOR Stores specific to Colorado. Contractor understands that Participating Entities may use their own Purchase Card Type programs and will agree to accept this payment type at participating CONTRACTOR Stores.

Other Participating Entities may have their own Purchase Card Type programs. For those Participating Entities, their individual Purchase Card rules apply.

C. Administrative Fee Payments

For each Fiscal Year quarter, the Contractor shall remit to the State an administrative fee equal to 1% of the total spent by all Purchasing Entities under this Participating Addendum during that quarter. The Contractor shall remit all administrative fees to the State's Primary Contact identified in this Participating Addendum, and with the payee as "State of Colorado", within 30 days following the State Fiscal Year quarter to which the administrative fee applies.

5. REPORTING - NOTIFICATION

A. Volume Reporting

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - a. The total spent by each type of Purchasing Entity under this Participating Addendum.
 - b. The total of the list cost of all items purchased by each type of Purchasing Entity under this Participating Addendum.

- c. The total estimated cost savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list cost minus the total spent for that Purchasing Entity.
- d. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Participating Addendum.
- e. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.
- f. The amount of the total administrative fee due to the State.
- g. Any additional summary information as requested by the State.
- ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
 - a. The name of the Purchasing Entity who the sale was made to.
 - b. The date of the sale.
 - c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended cost for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list cost for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list cost.
 - d. Any other detail information as requested by the State.

B. Additional Operational Reporting

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Participating Entities as requested by the State. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

C. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact described in this Participating Addendum.

D. Performance Outside the State of Colorado or the United States, C.R.S. § 24-102-206

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact described in this Participating Addendum, within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations.

Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum.

6. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall hold and maintain any and all Confidential Information provided to Contractor or made available to Contractor by the State or its Purchasing Entities in confidence for the sole and exclusive benefit of the State or Purchasing Entity that provided such Confidential Information. Contractor shall not, without prior written approval of the State, use for Contractor's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Participating Addendum. Any request or demand to Contractor by any third party for the State's Confidential Information shall be immediately forwarded to the State's primary contact described in the Participating Addendum.

B. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §6.A of this Exhibit A may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §6.A of this Exhibit A.

7. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the Work. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State or a Purchasing Entity, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum or any Order.

B. Apparent Conflicts of Interest

Contractor acknowledges that with respect to this Participating Addendum, even the appearance of a conflict of interest will be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Contractor's obligations under this Participating Addendum.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Participating Addendum.

8. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Participating Addendum, in whole or in part or in a timely or satisfactory manner, shall be a breach. The 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 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved party shall give written notice of breach to the other Party's primary contact described in this Participating Addendum. If the notified Party does not cure the breach within 30 days after receipt of written notice, or, if a cure cannot be completed within 30 days but cure of the breach has not begun within 30 days and has not been pursued with due diligence, the State may exercise any of the remedies set forth in §9 of this Exhibit A. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in the Participating Addendum in order to protect the public interest of the State.

9. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum, the State, following the notice and cure period set forth in §8.B of this Exhibit A, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum and any remedies available by law or equity. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if applicable.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. At the State's request, Contractor shall return materials owned by the State that

Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the State at the State's request.

b. **Payments**

The State shall reimburse Contractor only for accepted Goods and Services received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest.

c. **Damages and Withholding**

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages. The State may withhold any amount that may be due Contractor as the State deems necessary to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the State in procuring from third parties replacement Work as cover.

ii. **Remedies Not Involving Termination**

The State, in its discretion, may exercise the following additional remedies:

a. **Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. **Removal**

Demand immediate removal from Work under this Participating Addendum of any of Contractor's employees, agents, or Subcontractors whom the State deems unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest.

c. **Intellectual Property**

In the event that any Work infringes a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at the State's option (a) secure that right for the State; (b) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (c) remove any infringing Work and refund the value of such Work to the State.

B. **Contractor's Remedies**

If the State is in breach of any provision of this Participating Addendum, Contractor, following the notice and cure period set forth in §8.B of this Exhibit A and the dispute resolution process in §10 of this Exhibit A shall have all remedies available to it at law and equity.

10. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum, or any Order to which the State is a party, which cannot be resolved by the designated Participating Addendum representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §10.A of this Exhibit A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Participating Addendum or any Order to which the State is a party by the State to the Procurement Official of State Purchasing and Contracts Office for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the purchasing director, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

11. RIGHTS IN WORK PRODUCT

Unless otherwise modified by another Exhibit to this Participating Addendum, the State shall have all rights to title and ownership granted to it by the Master Agreement.

12. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S.

13. GENERAL PROVISIONS

A. Binding Effect

All provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

B. Counterparts

This Participating Addendum may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

C. Venue

The exclusive venue for all suits or actions related to this Participating Addendum shall be in the State of Colorado, in the City and County of Denver.

D. Modification

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Participating Addendum, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

E. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of the Participating Addendum.

F. Survival of Certain Participating Addendum Terms

Any provision of this Participating Addendum that imposes an obligation after termination or expiration of the Participating Addendum shall survive the termination or expiration of the Participating Addendum and shall be enforceable by the other Party.

G. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under C.R.S. §§39-26-701, et seq.(Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Some Purchasing Entities may be subject to taxes for Orders, but in no event shall the State have liability to the Contractor for any such taxes.

H. Third Party Beneficiaries

Except for the Parties' respective successors and assigns permitted under this Participating Addendum, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties, except for rights explicitly provided for Participating Entities or rights contained in an Order. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties, except for rights explicitly provided for Participating Entities or rights contained in an Order. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to the Participating Addendum, and do not create any rights for such third parties, except for rights explicitly provided for Participating Entities or rights contained in an Order.

I. Standard and Manner of Performance

Contractor shall perform its obligations under this Participating Addendum in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

J. Additional Insured

The Contractor shall ensure that the State is added as an additional insured for all insurance required under the Master Agreement

14. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

Notwithstanding anything to the contrary in this Participating Addendum, these in the event of a conflict, these special provisions shall supersede and control over all terms of the Master Agreement and all other terms of this Participating Addendum.

A. CONTROLLER'S APPROVAL. C.R.S. §24-30-202(1).

This Participating Addendum shall not be valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. C.R.S. §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

No term or condition of this Participating Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Participating Addendum. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Participating Addendum. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which

purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Participating Addendum, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED.

The State does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Participating Addendum or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Participating Addendum shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Participating Addendum and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Participating Addendum, including, without limitation, immediate termination of this Participating Addendum and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. C.R.S. §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Participating Addendum. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET. C.R.S. §§24-30-202(1) and 24-30-202.4.

Subject to C.R.S. §24-30-202.4(3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. §39-21-101, et seq.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. C.R.S. §8-17.5-101, et seq.

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Participating Addendum and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Participating Addendum, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Participating Addendum or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to

perform work under this Participating Addendum. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Participating Addendum is being performed, (ii) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Participating Addendum, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Participating Addendum for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. §24-76.5-101, et seq.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of C.R.S. §24-76.5-101 et seq., and (iii) has produced one form of identification required by C.R.S. §24-76.5-103 prior to the effective date of this Participating Addendum.

PARTICIPATING ADDENDUM EXHIBIT B
PRODUCTS AND PRICE LIST

- A. Contractor has been awarded the following Immediate Need After Market Automotive Parts categories:
- 1) Air Conditioning
 - 2) Alternators and Starters
 - 3) Batteries
 - 4) Bearings, Ball and Roller
 - 5) Belts and Hoses
 - 6) Brakes
 - 7) Electrical and Ignition
 - 8) Emission and Exhaust
 - 9) Engine and Drive Train
 - 10) Filter, Oil, Gas, Air and Transmission
 - 11) Gaskets and Seals
 - 12) Heating and Cooling (Engine)
 - 13) Lamps, Lighting and Mirrors
 - 14) Oils and Lubricants, Regular and Synthetic
 - 15) Pumps, Fuel and Water
 - 16) Suspension, Shocks, Struts and Steering
 - 17) Wipers/Washers
 - 18) Shop Supplies and Equipment
 - 19) Winter Accessories
- B. The Products and Price List is located on the dedicated State website, and is incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the Lead State and shall be effective when published on the dedicated State website.