

WALK-IN BUILDING SUPPLIES

Led by the State of Utah

Master Agreement #: MA087

Contractor: **LOWE'S HOME CENTERS, LLC**

Participating Entity: **STATE OF GEORGIA – 99999-SPD-G20170531-0002**

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. Changes: The following terms and conditions will be added to the Participating Addendum for the Participating State:
 - a. State agencies, state authorities, local government, municipalities, cities, townships, counties and other political subdivisions of the State of Georgia shall be referred to collectively as "Authorized Users."
 - b. Department of Administrative Services shall be referred to as "DOAS."
 - c. Warranty - Nonconforming Goods:
All goods sold by the Contractor to the Participating State shall be free from any defects in design, material or workmanship. If any goods offered by the Contractor are found to be defective in material or workmanship or do not conform to Contractor's Warranty, the Participating State shall have the option of returning, repairing, or replacing the defective goods at Contractor's expense. Payment of any goods shall not constitute acceptance. Acceptance by the Participating State shall not relieve the Contractor of its warranty or any other obligation under the Addendum.
 - d. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Addendum without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Addendum, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall

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not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State of Georgia.

- e. State of Georgia administers a program which provides a purchasing card (hereinafter, "State of Georgia PCard") to be used by authorized government employees of certain governmental entities electing to participate in the program to purchase necessary supplies. Contractor shall impose no fee on either State of Georgia or any Authorized Users for the use of the State of Georgia PCard pursuant to this Addendum. All purchases made by Authorized Users utilizing State of Georgia PCards shall be exempt from sales tax. It is the responsibility of the Authorized Users to provide the Authorized User's tax identification number as needed at the point of sale.

The Contractor shall keep the State of Georgia PCard numbers confidential and shall not disclose the State of Georgia PCard numbers except as expressly authorized by State of Georgia. The Contractor represents that State of Georgia PCard numbers will be processed, transferred and stored in compliance with the Payment Card Industry Data Security Standards. Contractor shall provide prompt written notice to the State of Georgia Cardholder in accordance with applicable laws and regulations in the event of (1) any unauthorized disclosure of State of Georgia PCard numbers or (2) Contractor's failure to maintain compliance with the Payment Card Industry Data Security Standard in the Contractor's contract performance. Contractor agrees to cooperate with State of Georgia.

- f. IMPLEMENTATION OF E-PAYABLES SOLUTION: DOAS administers a program which provides a purchasing card (hereinafter, "State of Georgia PCard") to be used by authorized government employees of certain governmental entities electing to participate in the program to purchase necessary supplies. Contractor does not impose a fee on either DOAS or any Authorized User for the use of the PCard. DOAS has entered into a Contract with its P-Card provider, Bank of America, to provide the ePayables solution which will allow DOAS and Authorized Users to facilitate electronic payment by DOAS and Authorized Users to the Contractor.

The Contractor agrees to accept payment via ePayables and shall impose no fee on either DOAS or any Authorized User for the use of ePayables pursuant to this Statewide Contract. All purchases made by Authorized Users representatives utilizing State of Georgia ePayables shall be exempt from sales tax. It is the responsibility of the Authorized User representative to provide the Authorized User's tax identification number as needed at the point of sale.

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The Contractor shall keep the State of Georgia ePayables numbers confidential and shall not disclose the State of Georgia ePayables numbers except as expressly authorized by DOAS. The Contractor represents that State of Georgia ePayables numbers will be processed, transmitted and stored in compliance with the Payment Card Industry Data Security Standard. The Contractor shall provide immediate written notice to the current DOAS contract administrator in the event of (1) any unauthorized disclosure of State of Georgia ePayables Numbers or (2) Contractor's failure to maintain compliance with the Payment Card Industry Data Security Standard in the Contractor's contract performance. The Contractor agrees to cooperate with DOAS, Authorized Users, and DOAS contractual partner(s) for ePayables in resolving any issues or disputes.

- g. Termination of the Addendum. Following thirty (30) days' written notice by DOAS to Contractor, DOAS may terminate the Addendum for convenience without the payment of any penalty or incurring any further obligation to Contractor. Either party may terminate this Addendum for cause based upon material breach of this Addendum by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to cure not to exceed thirty (30) days.
- h. Administrative Fee:
Pursuant 10 O.C.G.A. Section 50-5-51(10), DOAS has the authority to collect moneys, rebates, or commissions payable to the State of Georgia that are generated by supply contracts established pursuant to O.C.G.A. Section 50 5-57. These administrative fees are used by DOAS to fund various initiatives, including the administration of existing and new statewide contracts, training, and technology. For this Addendum, DOAS requires the Contractor to pay to DOAS an administrative fee on all sales pursuant to the Addendum. The administrative fee amount for this Addendum is 1%. The Contractor must agree that the Fee will not be identified separately from the product and/or service pricing offered to Authorized Users wherever that pricing may appear (website, catalog, invoices, etc.). This Fee will be collected by the Contractor and remitted to DOAS in accordance with the following paragraphs.

The Quarterly Sales Report must be received by DOAS twenty (20) days after the end of the Fiscal Quarter through submission within the Contractor Portal of Team Georgia Marketplace, and the Fees must be received as a response to an invoice generated by DOAS between the time of receipt of the invoice and forty-five (45) days after the end of the fiscal quarter as defined by the table below:

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| <i>DOAS' Fiscal Quarters</i> | <i>Months</i> | <i>Contractor's Quarterly Sales Report Due Date</i> | <i>Contractor's Payment Due Date (In Response to DOAS generated Invoice)</i> |
|------------------------------|--|---|--|
| <i>Quarter 1</i> | <i>July 1st – September 30th</i> | <i><u>October 20th</u></i> | <i><u>November 15th</u></i> |
| <i>Quarter 2</i> | <i>October 1st – December 31st</i> | <i><u>January 20th</u></i> | <i><u>February 15th</u></i> |
| <i>Quarter 3</i> | <i>January 1st – March 31st</i> | <i><u>April 20th</u></i> | <i><u>May 15th</u></i> |
| <i>Quarter 4</i> | <i>April 1st – June 30th</i> | <i><u>July 20th</u></i> | <i><u>August 15th</u></i> |
| | | | 30 DAYS FOLLOWING TERMINATION OF SWC |

At the end of each state fiscal quarter as defined above, Contractor shall prepare the Quarterly Sales Report and submit the file through the Contractor Portal of Team Georgia Marketplace, including the Contractor's most up-to-date Invoice Contact Name (Billing Contact), Contractor Billing Address, and Contractor Billing E-Mail. In the event that no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating that no sales have occurred, and submit the file through Contractor Portal of Team Georgia Marketplace. No later than the date identified above as the "Contractor's Payment Due Date" for each fiscal quarter, the Contractor shall remit a payment of fees to DOAS in response to a DOAS generated invoice, through the following method:

- Electronic Funds Transfer (EFT) - preferred

By submission of these reports and corresponding Contractor payments, Contractor is certifying their correctness

- I. Auditing and Contract Close Out. All sales reports and Fee payments shall be subject to audit by the State. Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the statewide contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent

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books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the statewide contract, wherever such records may be located during normal business hours. Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

In no event shall Contractor retain any amount of money in excess of the compensation to which Contractor is entitled and all Fees owed DOAS shall be paid within thirty (30) calendar days of termination of the statewide contract for any reason.

- J. Modifying or Canceling the Fee. DOAS reserves the right to modify and/or cancel the Fee at any time. Contractor shall immediately amend the statewide contract pricing to reflect any modification or cancellation of the Fee by DOAS. In addition, DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.
- K. Late Payment Fee. In the event DOAS does not receive the Contractor's payment of the Fees on or before the Contractor's Payment Due Date, the parties agree the Contractor must pay DOAS interest on the overdue Fees at a rate of eighteen percent (18%) per annum. Interest will be calculated as follows:

$$(\text{Administrative Fee Amount Due}) \times (18\%) = X$$

$$X / 365 \text{ (366 for leap years)} = Y$$

$$Y \times (\text{Number of Days Payment is Late}) = \text{Interest Owed}$$

For the purposes of this provision, payment of the Fees shall be considered received by DOAS on (1) the date of DOAS' receipt of the EFT confirmation or (2) the date DOAS receives the envelope containing a check for the correct amount of the administrative fee. In the event the Contractor does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Contractor makes an error and overpays, the Contractor is responsible for alerting DOAS in writing of the Contractor's discovery of the overpayment. DOAS will confirm whether an overpayment has occurred and refund or credit the overpayment amount to the Contractor no later than thirty (30) days' following DOAS' receipt of written notice of the overpayment or will credit the excess amount on the invoice for the following

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quarterly fee submission. DOAS will have no responsibility for interest or any other fees with respect to Contractor's overpayment of Fees.

- L. Default. **THE CONTRACTOR'S RESPONSIBILITY TO COLLECT AND REMIT THE ADMINISTRATIVE FEE ON BEHALF OF DOAS IS A SERIOUS RESPONSIBILITY AS THE CONTRACTOR IS HANDLING STATE FUNDS.** Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring Contractor in default and recovering procurement costs from Contractor in addition to all outstanding Fees and interest.
- M. **Drug-free Workplace.** The Contractor hereby certifies as follows:
- i Contractor will not engage in the unlawful manufacture, sale, distribution dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and
 - ii If Contractor has more than one employee, including, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Contract; and
 - iii Contractor will secure from any subcontractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the Contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Contractor may be suspended, terminated, or debarred if it is determined that:

- (i) Contractor has made false certification here in above; or
- (ii) Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

Debarred, Suspended, and Ineligible Status. Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4.

- N. Certification Regarding Sales and Use Tax. By executing the Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and

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remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the DOAS or its representative filing for damages for breach of contract.

- O. De-appropriation of Funds. Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if DOAS determines that adequate funds are de-appropriated such that DOAS cannot fulfill its obligations under the Contract, which determination is at DOAS's sole discretion and shall be conclusive.
- P. Compliance with O.C.G.A. § 50-5-85 Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. 50-5-85.
3. 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 Georgia. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

| | |
|------------|--|
| Name: | Government Manager |
| Address: | 1605 Curtis Bridge Road, Wilkesboro, NC 28697 Mail Code: A3ECS |
| Telephone: | 888-310-7791 |
| Fax: | 877-793-8455 |
| Email: | NASPO@Lowes.com |



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Participating Entity

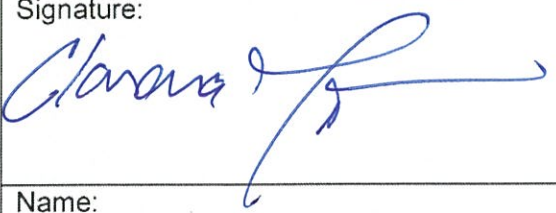
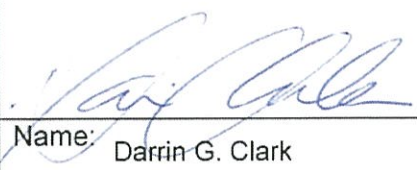
| | |
|------------|--|
| Name: | Mario Morales |
| Address: | 200 Piedmont Avenue, S.E. Suite 1308, West Tower, Atlanta, Georgia 30334 |
| Telephone: | (404) 463-3857 |
| Fax: | |
| Email: | mario.morales@doas.ga.gov |

5. No Modifications or Additions: No changes to the terms and conditions of the Master Agreement are required.

6. Authorized Point-of-Sale: Lowes retail stores located within the State of Georgia. 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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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

| | |
|---|--|
| Participating Entity: STATE OF GEORGIA | Contractor: Lowe's Home Centers, LLC |
| Signature:  | Signature:  |
| Name: CLARENCE INGRAM | Name: Darrin G. Clark |
| Title: Group Category Manager | Title: VP ProServices |
| Date: 7/14/2017 | Date: July 13, 2017 |

[Additional signatures may be added if required by the Participating Entity]

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.]