



**PARTICIPATING ADDENDUM
FLOORCOVERING & INSTALLATION SERVICES 2016-2021
Administered by the State of Utah (hereinafter "Lead State")**

**MASTER AGREEMENT
MANNINGTON MILLS DBA MANNINGTON COMMERCIAL
Master Agreement No: MA2282
(hereinafter "Contractor")**

And

**THE STATE OF NORTH CAROLINA
(hereinafter "Participating State/Entity")**

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1. **Scope:** This addendum covers the Floorcovering & Related Services led by the State of Utah for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state's statutes to utilize **state/entity** contracts with the prior approval of the state's chief procurement official.
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Participating State Modifications or Additions to Master Agreement:**

**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 conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
 - (b) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. 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.



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(c) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless Supplier Manager receives written notice from 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 Supplier Manager 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.

(d) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, Bids received, evaluation of Bids received, award of contract, and the payment for goods delivered.

(e) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges by such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

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



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PILE WEIGHT TESTING

The following instructions/processes are to be followed for sampling and testing when the cost of the carpet is **\$10,000.00 or greater**.

1. Contract is awarded by P&C and agency and Vendor are notified in writing by P&C.
2. Agency issues purchase order and sends a copy of the purchase order to P&C. This information is needed to communicate with agency and Vendor concerning lab reports.
3. Sample is provided (before or during installation) to P&C identifying the end user.
4. P&C sends sample to laboratory for testing. Laboratory sends lab result to P&C.
5. If requested by the end user, P&C notifies agency with copy of lab report. If report is favorable, agency notifies Vendor to proceed with installation. If report is not favorable, project goes on hold until issues can be resolved. If the end user conducts their own quote or bid, the report will not be sent to end user unless requested (Contact Receptionist at (919) 807-4500 for a copy of the report).
6. Vendor notifies P&C that carpet has been installed and requests inspection. See Quality Assurance Section XXXX for details.
7. Quality Assurance Inspection conducted by XXXXX.
8. If favorable, agency is notified to release payment. If unfavorable, issues must be resolved and re-inspected.

Note: Steps 4 and 5 take approximately 1.5-2.0 weeks.

It shall be a requirement that all carpet sold in an amount greater than \$10,000.00 (price of carpet only) shall be tested to verify pile weight. This testing will be performed in the manner prescribed below prior to release of invoice, and such testing shall be completed at the expense of the Vendor.

Upon contract award, a sampling of the actual carpet to be installed shall be provided by the Vendor at no charge to the State. The sample shall be 18" x the full width of the roll goods or in the case of carpet tiles, three (3) squares are required, in accordance with the requirements of ASTM Method D418.

Carpet sample to be sent to:

NC Department of Administration
Division of Purchase and Contract, Quality Assurance Section
1305 Mail Service Center
Raleigh, NC 27699-1305
Telephone Number: 919-807-4500
Fax: 919-807-4511



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The sample shall be forwarded by the Division of Purchase and Contract to the currently approved testing facility (Commercial Testing Company, PO Box 985, Dalton, GA 30722-0985, telephone (706) 278-3935, Lab Mgr., Larry Cooper). The carpet shall be tested for compliance with the required pile weight, at the above testing facility. All costs for such testing are to be the responsibility of the Vendor or dealer/installer.

Liquidated damages. The parties agree that the amount of actual damages for delivery of noncompliant carpet with relatively small variations in the required pile weight specification is extremely difficult if not impossible to measure accurately. Thus, the parties agree that the following measurement of liquidated damages is reasonable and shall be assessed for carpet that testing demonstrates weighs less than the permitted weight tolerance, calculated as follows: If the pile yarn face weight of the sample as tested is below the minimum weight tolerance allowed in the relevant specification (i.e., six percent), a deduction proportional to the shortage in pile weight will be made from the invoiced net amount for the carpet. That is, if the variance in the pile yarn face weight is greater than 6% under the nominal value specified in the manufacturer's current sample book, then an amount equal to that percentage of the contract price of the carpet itself (not including installation and taxes) shall be deducted by the Vendor from the amount due on the invoice as liquidated damages and not as a penalty. Notwithstanding such liquidated damages provision, however, if the tested variance in pile yarn face weight is 10% or greater below the nominal value, the purchasing State Agency may elect in its absolute discretion to reject the carpet as nonconforming, and the Vendor shall thereupon reinstall new carpet that meets all requirements, free of any additional cost or charge. End users are encouraged to request a copy of the lab report by contacting Purchase and Contract.

Example of liquidated damage calculation-based on the Testing Report:

Designated weight (26 oz.) minus Average Pile Yarn Weight (23.7) = 2.3 oz. (with a total price for the carpet of \$5,000)

2.3 oz. divided by designated weight (26 oz.) = .08846 or 8.85%, so the amount of 2.85% times the total carpet price will be deducted as liquidated damages from the total cost of the carpet only.

2.85% x \$5,000.00 = \$142.40 liquidated damages. \$5,000.00 - \$142.50 = \$4,857.50 final invoiced carpet cost

The Division will notify the end user and the Vendor in writing if liquidated damages are to be assessed.

As of September 15, 2017, current prices for Pile Weight Testing is \$145.00/sample for plain backing and \$200.00/sample for special backing. These prices are subject to change without notice. Failure to pay invoices for testing performed shall constitute a material breach of this contract.

4. Lease Agreements: Leasing IS NOT an alternative under the Master Agreement.



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5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Jody Steger
Address	PO Box 12281, Calhoun GA 30703
Telephone	(703-489-5698
Fax	
E-mail	jody_steger@mannington.com

Installer

Name	
Address	
Telephone	
Fax	
E-mail	

Participating Entity

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



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6. Named Installers: The named Installer, as referenced below, is the only installer authorized to provide services under this Participating Addendum. The named Installer's 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.

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

Participating State:	Contractor:
By: THE STATE OF NORTH CAROLINA <i>Grant F. Bralley</i>	By: <i>[Signature]</i> MANNINGTON MILLS dba MANNINGTON COMMERCIAL
Name: <i>[Signature]</i>	Name: Jason McKee
Title: <i>Category Manager</i>	Title: VP, Commercial Carpet
Date: <i>11/21/2017</i>	Date: 11/21/2017

Named Installer:
By:
Name:
Title:
Date:



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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Shannon Berry
Telephone	775-720-3404
E-mail	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]