

**PARTICIPATING ADDENDUM NO. 7667 ("Addendum") to**  
**NASPO VALUEPOINT**  
**VEHICLE LIFTS AND GARAGE ASSOCIATED EQUIPMENT**

**Administered by the State of Washington (hereinafter "Lead State")**

**Master Agreement No: 05316**

**Vehicle Service Group, LLC**  
(Hereinafter "Contractor")

for

State of Oregon, by and through the Department of Administrative Services, Enterprise  
Goods and Services, Procurement Services  
("Participating State")

On November 18, 2016, the State of Washington issued an Invitation For Bid, #05316, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint"), and other purchasing entities seeking offers from qualified and responsible proposers to provide Vehicle Lifts and Garage Associated Equipment. Vehicle Service Group, LLC ("Contractor") submitted a bid, was awarded a contract on February 10, 2017 under executed Master Agreement No. 05316 ("Master Agreement"), which consists of contract terms and conditions and other attachments.

The State of Oregon ("State" or "Oregon") is a member of NASPO ValuePoint. The State, by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS"), on behalf of the State of Oregon and its agencies and the Oregon Cooperative Procurement Program ("ORCPP") members (collectively "Authorized Purchasers" as defined in Exhibit No. 1), has elected to participate in the Master Agreement, subject to the terms and conditions of this Participating Addendum ("Addendum" or "Participating Addendum"). This Addendum is effective when all necessary approvals have been obtained and signed by the parties ("Effective Date").

**1. Scope; Order of Precedence.** This Addendum covers the purchase of Vehicle Lifts and Garage Associated Equipment available to Authorized Purchasers under the Master Agreement. This Addendum consists of the following documents, which are incorporated herein as part of this Addendum:

- a) Exhibit No. 1 - State Specific Terms and Conditions
- b) Exhibit No. 2 - Insurance
- c) Exhibit No. 3 - Contractor Tax Certification
- d) Exhibit No. 4 - Form of Purchase Order
- e) Exhibit No. 5 - Report form for Vendor Collected Administrative Fee (VCAF)/Volume Sales Report (VSR)

This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Authorized Purchasers. In the event of a conflict between the terms and conditions of this Addendum, the Master Agreement and Purchase Orders, the following descending order of

precedence applies:

- a) This Addendum, less its exhibits;
- b) Exhibit No. 1 of this Addendum (State Specific Terms and Conditions);
- c) Exhibit No. 2 of this Addendum (Insurance) and Exhibit No. 3 of this Addendum (Contractor Tax Certification);
- d) Exhibit No. 5 (Vendor Collected Administrative Fee (VCAF)/Volume Sales Report (VSR);
- e) Exhibit No. 6 (
- f) Master Agreement Number 05316 between the State of Washington, Division of Purchasing and General Services and Contractor IFB number 05316 and its exhibits and attachments); and
- f) Exhibit No. 4 of this Addendum (Purchase Order).

Nothing in this Addendum limits the Contractor's obligations under the Master Agreement unless otherwise noted herein. If a Contractor obligation in this Addendum conflicts with a Contractor obligation of the Master Agreement, the order of precedence in this Section 1 applies.

**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 respective state chief procurement official.

**3. Participating State Modifications or Additions to Master Agreement:**

(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Participating Entity to check one box.

☐ No changes to the terms and conditions of the Master Agreement are required

☒ In addition to the Exhibits identified above, the following changes are modifying or supplementing the Master Agreement 05316 terms and conditions.

**4. Authorized Purchaser - Contractor Selection:**

This Addendum is not exclusive, Authorized Purchasers may acquire the products and services from other contractors. In the event DAS PS awards Addenda to more than one contractor under this solicitation, Authorized Purchasers who are State Agencies shall follow the selection process below.

Authorized Purchasers who are not State Agencies may select the Contractor of the Authorized Purchaser's choice in compliance with applicable statute and rules.

**4.1 Contractor Selection Process, Large Purchases.** From time to time, Authorized Purchasers (or Purchasing Entities), who are State Agencies, may purchase Products or Services from Contractor or other contractors and shall use one of the following three selection processes for all purchases over \$10,000:

**4.1.1 Brand Name Justification**

A documented brand name justification in compliance with applicable statute and rule.

OR

#### 4.1.2 Best Value Analysis

Authorized Purchaser may conduct a comparison of the offers based upon a best value analysis. Authorized Purchaser shall:

- Contact at least 3 different Master Agreement Contractors via phone, e-mail or facsimile and request a quote for the anticipated Goods. Quoted rates must not exceed the most competitive rates and discounts set forth in the Master Agreement. However, a Contractor may agree to extend specialized, discounted pricing based on the requirements by providing a specific quote to the Authorized Purchaser.
- Determine which Contractor provides the best value for Authorized Purchaser based on Authorized Purchaser's application of some or all of the following factors:
  - Applicable discounts and incremental pricing options;
  - Shipping costs;
  - Delivery process and service levels;
  - Installation, maintenance and repair service levels;
  - Applicable warranties;
  - Contractor's past performance record through reference checks;
  - Contractor's service area;
  - Price comparison of the current market value of Good and services similar to the Products;
  - Price comparison to past purchases and the goods similar to the products, taking the inflation rate into account;
  - Cost analysis through an element-by-element examination of the estimated or actual cost of proposed goods to determine whether the supplier's costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for necessity and reasonableness are materials' costs, labor costs, equipment and overhead;
  - Comparison of pricing to MSRP;
  - Market conditions and competition levels;
  - General economic conditions;
  - Life cycle costing including expected life, salvage value and discounted total cost of ownership.
- Document its procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.

4.1.3 Contractor Selection Process, Small Purchases. For purchases under \$10,000, Authorized Purchaser who are State Agencies may select the Contractor of its choice in compliance with applicable statute and rule.

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

Contractor

Name	Vehicle Service Group, LLC – Attn: Christine Blitz
Address	2700 Lanier Dr., Madison IN, 47250
Telephone	(800) 445-5438 Ext. 5655
Fax	
E-mail	blitz@rotarylif.com

Oregon, Contract Administrator

Name	Blake Schwabauer State of Oregon, Department of Administrative Services, Procurement Services
Address	1255 SE Ferry Street, Salem, OR 97301
Telephone	503-378-4653
Fax	503-373-1626
E-mail	Blake.j.schwabauer@oregon.gov

6. **Subcontractors:** All Contractor dealers and resellers authorized in the State of Oregon, as shown on the dedicated **Vehicle Service Group, LLC** (cooperative contract) website, are approved to provide sales and service support to Authorized Purchasers. The Contractor's authorized dealers and reseller's participation shall be in accordance with the terms and conditions set forth in this Addendum and the Master Agreement.
7. **Orders:** All Purchase Orders issued by Authorized Purchasers must include a reference to the Master Agreement, 05316, and this Addendum, #7667 All valid Purchase Orders issued by Authorized Purchasers are subject to the terms and conditions of this Addendum. All Authorized Purchasers issuing valid purchase orders shall be obligated to pay Contractor for goods and services when the terms of the Purchase Order have been completed and payment has been approved by the Authorized Purchaser.
8. **Tax Compliance:** As set forth on Exhibit No. 3, Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Contractor shall, throughout the duration of this Addendum and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

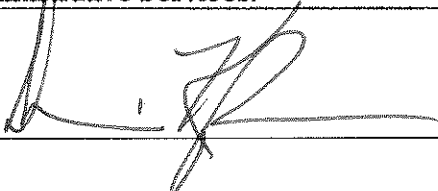
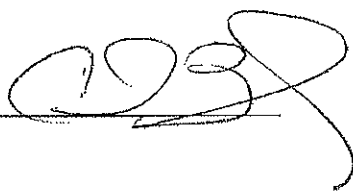
Any violation of this Section 8 constitutes a material breach of this addendum and any contract issued under this Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Addendum and any Contract issued under this Addendum. Any violation shall entitle DASPS or Authorized Purchaser to terminate this Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Addendum, a Contract, at law, or in equity, including but not limited to:

Termination of this Addendum or the applicable Contract, in whole or in part; Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Authorized Purchaser's setoff right, without penalty; and Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DASPS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods or Services or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and DASPS or Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

9. **Participating Addendum Integration:** This Addendum and the Master Agreement set forth the entire agreement between Contractor and Participating State with respect to the subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein. Any attempt to modify or add or incorporate terms and conditions inconsistent with, and contrary to, the terms and conditions of this Addendum and the Master Agreement through a Contract or other document is null and void and hereby rejected. The terms and conditions of this Addendum and the Master Agreement shall prevail and govern in case of any attempted modifications or inconsistent terms.

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

Participating State: The State of Oregon acting by and through the Department of Administrative Services.	Contractor: Vehicle Service Group, LLC
By: 	By: Christine Bilz 
Title: <u>PROCUREMENT MANAGER</u>	Title: <u>Government Sales Leader</u>
Date: <u>30 APR 2018</u>	Date: <u>April 27, 2018</u>

## **EXHIBIT NO. 1**

### **Changes to Master Agreement State-Specific Constitutional, Statutory and Other Requirements**

1. **Definitions.** The following terms have the meanings set forth below. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Master Agreement and its exhibits.

"Authorized Purchaser" means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor.

"DAS PS" means the State of Oregon acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services.

"ORCPP" means the Oregon Cooperative Purchasing Program Members, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the goods and services available under a price agreement entered into by the State.

"Master Agreement" means the State of Washington Master Agreement #05316 \_between Contractor and the State of Washington, on behalf of the member states of the National Association of State Procurement Officials and the NASPO ValuePoint, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the goods and services described therein.

"Purchase Order" means the purchase order document / order document submitted to Contractor by an Authorized Purchaser that incorporates this Addendum by reference and specifies the quantity and type of goods or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Agreement and this Addendum.

"State", for the purposes of this Participating Addendum, means the State of Oregon.

## **2. Purchase Orders.**

**2.1 Purchase Orders.** Authorized Purchasers may use their own forms for Purchase Orders. State agencies may also use the general State-approved Purchase Order referencing the Master Agreement Number, substantially in the form attached hereto as Exhibit No. 4. To the extent that the terms of any form differ from the terms of this Addendum, the terms of this Addendum supersede such contrary terms. Each Purchase Order from an Authorized Purchaser that is not a State agency must contain, on the front page, the following language:

**THIS PURCHASE IS PLACED AGAINST THE STATE OF WASHINGTON MASTER AGREEMENT NO.05316 THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, CONTRACT NO. 7667 APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.**

**2.2 Effect of Purchase Orders.** The State is only liable for purchases made by State of Oregon agencies that issue Purchase Orders. Other Authorized Purchasers are responsible for any purchases under Purchase Orders they issue. The State expressly disclaims any liability for purchases made by non-State agency Authorized Purchasers or any other entity.

**2.3 Verification of Authorized Purchasers.** Contractor shall verify that it provides goods and services under this Addendum only to Authorized Purchasers. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

**3. Payment Provisions.** All payments are subject to ORS 293.462.

As replacement Goods or new Goods become available, the products and price list must be refreshed. Contractor shall pass all cost reductions to the Authorized Purchasers, as pricing may decrease as replacement Goods or new Goods become available.

**4. Funds available and authorized/non-appropriation.** The State of Oregon's and its agencies' payment obligations under this Addendum are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Purchase Order issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Purchase Order from any part of Oregon state government other than Authorized Purchaser. Nothing in this Addendum or Purchase Order is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Authorized Purchaser represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Purchase Order issued under this Addendum.

## **5. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF)**

### **5.1 Volume Sales Reports (VSRs):**

**5.1.1** Contractor shall submit a Volume Sales Report (VSR), in the form attached hereto as Exhibit No. 5, no later than thirty (30) calendar days from the end of each calendar quarter, which contains:

Complete and accurate details of all receipts (sales and refunds) for the reported period:

- The information as identified in the DAS PS document titled Volume Sales Report Template - Data Requirement, Format and Layout (Exhibit 5); and
- Such other information as DAS PS may reasonably request.

Contractor shall send a VSR to DAS PS each quarter, whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter."

**5.1.2 Data Medium and Delivery Medium:** Contractor shall provide VSRs in MS Excel (.xls) format. VSRs must be submitted by e-mail. Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email. Approval from the Contract Administrator must be obtained for deviations from these requirements.

**5.1.3 Receipt/Acceptance:** The first VSR submitted by the Contractor must be submitted to the DAS PS Contract Administrator for review and approval. Approved first VSRs and subsequent VSRs must be submitted to [vcaf.reporting@state.or.us](mailto:vcaf.reporting@state.or.us). A separate section follows describing the administrative charge if it is applicable. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Price Agreement shall not preclude DAS PS from challenging the validity thereof at any time.

**5.1.4** DAS PS reserves the right to terminate this price agreement if volume sales reports are not received as scheduled on in the prescribed format.

**5.2 Vendor Collected Administrative Fee (VCAF):**

**5.2.1 Vendor Collected Administrative Fee (VCAF) PERCENTAGE:**

The Vendor Collected Administrative Fee (VCAF), is a charge equal to One Percent (1.0 %) of Contractor's Gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter.

**5.2.2 VCAF Amount / Payment Due Date:** During the term of this Price Agreement and for the sales during the last calendar quarter of the term of this Price Agreement, the Contractor shall remit VCAF payment to DAS PS within forty-five (45) calendar days after the end of each calendar quarter.

**5.2.3** Contractors may not reflect the VCAF fee as a separate line item charge to Authorized Purchasers. Contractor's proposed prices shall reflect all Contractor's charges to Authorized Purchasers. For the purposes of this Price Agreement, quarters end March 31, June 30, September 30, and December 31. DAS PS will invoice the Contractor for the VCAF on a State generated invoice from the information submitted on the VSR. Contractor is responsible for timely reporting and payment, regardless of entity that actually reports or makes VCAF payment to DAS PS.

**5.2.3.1 Payment Format:** The fee shall be in the form of a check remitted

To: State of Oregon  
Department of Administrative Services  
Attn: Shared Financial Services/PS  
155 Cottage Street NE  
Salem, Oregon 97301

Any other form of payment must be specifically approved by the Contract Administrator.

**5.2.3.2 Interest:** Any payments Contractor makes or causes to be made to DAS PS after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DAS PS's right to interest on late payments shall not preclude DAS PS from exercising any of its other rights or remedies pursuant to this Price Agreement or otherwise with regards to Contractor's failure to make timely remittances.

**5.3 Audit:** DAS PS, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's Records, as defined herein, and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest thereon at the rate provided in Section 5.2.3.2. At DAS PS'S request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by DASPS.

**5.4 Limitation of Liability:** Contractor acknowledges and agrees that the State shall bear no liability on Purchase Orders entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Goods or Services and the resulting contractual relationship, if any, with each such contracting party.



**6. Warranties.** Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Agreement and this Addendum for any purchases made by such Authorized Purchasers pursuant to Purchase Orders. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to Authorized Purchaser that:

**6.1.** Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

**6.2** Goods or Products will be new, unused, current production models, where applicable, and will be free from defects in materials, design and manufacture for manufacturer's standard warranty period. Where specifications have been made a part of the RFP, Contractor further warrants that all Goods or Products conform to the specifications and meet or exceed all quality and safety standards set in the RFP;

**6.3.** All Services to be performed under this Addendum will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Addendum;

**6.4.** Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Goods or Products, if any at time of delivery at no charge, and

**6.5.** All Goods or Products, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Goods or Products, and that no other person has any right, title or interest in the Goods or Products which is superior to or infringe upon the rights granted to Authorized Purchaser hereunder.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Master Agreement. All warranties provided in this Addendum are cumulative and will be interpreted expansively so as to afford Authorized Purchaser the broadest warranty protection available.

## **7. Indemnities.**

**7.1 General Indemnity.** Contractor will defend, save, hold harmless and indemnify the Authorized Purchaser and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors or agents under the Addendum.

**7.2 Infringement Indemnity.** Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Authorized Purchasers and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all costs, damages, attorneys' fees, and any and all costs incurred in any settlement negotiation or final settlement agreement resulting from, relating to, or arising out of a claim that any aspect of the goods or services furnished under a Purchase Order infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally cognizable intellectual property right of any third party (an "Infringement Claim").

**7.3 Participation.** Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 7.1 and 7.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 7.1 or Section 7.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon

without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

**7.4 Remedies.** If any goods or services furnished by Contractor are, in Contractor's opinion, likely to become the subject of an Infringement Claim, or if an Authorized Purchaser is prevented from exercising its rights under this Addendum based on any Infringement Claim or court order arising from any Infringement Claim, then Contractor may, at its option and expense, procure for the Authorized Purchaser the right to continue using the allegedly infringing goods or services, or replace or modify the goods or services so that they become non-infringing; provided that the replacement or modified good or service meets the specifications set forth in the applicable Purchase Order to the satisfaction of the Authorized Purchaser. If the foregoing remedies are not available, then Authorized Purchaser will return the allegedly infringing goods or terminate the allegedly infringing services, and Contractor will refund Authorized Purchaser's payments, in full, for the allegedly infringing goods or services.

## **8. Term and Termination of Participating Addendum.**

**8.1 Term.** This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

**8.2 Termination.** DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) days prior notice to Contractor. In addition, DAS PS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS PS may establish in such notice, for any reason, or upon the occurrence of any of the following events:

8.2.1 State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Addendum; or

8.2.2 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under this Addendum is prohibited or the State is prohibited from paying for such goods from the planned funding source.

Upon receipt of written notice of termination, Contractor will stop performance under all Purchase Orders as directed by State.

**8.3** Termination under any provision of this Addendum does not extinguish or prejudice State's or an Authorized Purchaser's right to enforce this Addendum or a Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or an Authorized Purchaser to indemnification by Contractor. If this Addendum or a Purchase Order is so terminated, the State or an Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by the Authorized Purchaser.

## **9. Termination of Individual Purchase Orders.**

**9.1** Individual Purchase Orders may be terminated at any time by written consent of Authorized Purchaser and Contractor or Authorized Purchaser may, at its sole discretion, terminate individual Purchase Orders, in whole or in part, upon 30 days written notice to Contractor.

**9.2** Authorized Purchaser may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

**9.2.1** Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;

**9.2.2** Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or Authorized Purchaser is prohibited from paying for such goods from the planned funding source; or

**9.2.3** Contractor commits any material breach of this Addendum or a Purchase Order.

**9.3** Upon receipt of written notice of termination, Contractor will stop performance under the Purchase Order as directed by Authorized Purchaser.

**9.4** Termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of Authorized Purchaser to indemnification by Contractor. In addition, termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a Purchase Order is so terminated, Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by Authorized Purchaser.

## **10. Compliance with Law.**

Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Addendum or any Purchase Order, and an Authorized Purchaser's performance under a Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230 and 279B.270. In addition, Contractor warrants good and services provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor also agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**11. Application of Public Records Law.** Contractor acknowledges that any disclosures Contractor makes to Authorized Purchaser under this Addendum are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410 – 192.505, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Authorized Purchaser may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Authorized Purchaser's release of documents to Entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense,

**12. Recycled Products.** Contractor will use, to the maximum extent economically feasible in the performance of this Addendum or any Purchase Order, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**13. Notices.** Except as otherwise provided in a Purchase Order, any formal communications between the parties to or notices to be given under a Purchase Order will be given in writing by personal delivery of a facsimile transmission or the notice or mailing the notice, postage prepaid, at the address or number set forth on the Purchase Order. Any communication so addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication delivered by facsimile will be deemed to be given when a confirming report for the transmission is generated by the transmitting machine. To be effective against the receiving party, such facsimile transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Purchase Order. Any communication or notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative.

As between Contractor and State with respect to this Addendum, the Primary Contacts of Contractor and State are set forth above.

**14. Governing Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Addendum and resulting Purchase Orders, including, without limitation, their validity, interpretation, construction, performance, and enforcement.

**15. Jurisdiction and Venue.** Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or a Purchase Order under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or consent to jurisdiction in State or Federal Court.

Any Claims between Contractor and an Authorized Purchaser other than the State of Oregon or State agency that arise from or are related to individual Purchase Orders or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Authorized Purchaser resides or has its principal office, or at Authorized Purchaser's option, within such other county as Authorized Purchaser will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**16. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Addendum or any Purchase Order. An Authorized Purchaser may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

**17. Merger Clause; Waiver.** This Addendum, including the Master Agreement and the exhibits attached to this Addendum, constitutes the entire agreement between the parties on the subject matter hereof, and supersede all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between these parties that are not specified in this Addendum. No waiver,

consent, modification or change of terms of this Addendum binds either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Addendum does not constitute a waiver by the State of that or any other provision.

**18. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations, nor commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

**19. Access to Records.** Contractor will maintain all fiscal records relating to Purchase Orders in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders in such a manner as to clearly document Contractor's performance thereunder. The Authorized Purchaser, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Authorized Purchasers. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six years, or such longer period as may be required by applicable law following final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.

**20. Severability.** If any term or provision of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term or provision held to be invalid.

**21. Survival.** Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum.

**22. Insurance.** Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2. No Purchase Orders may be placed or accepted until proof is provided that these requirements have been met.

**22. Amendments.** This Addendum may be modified in writing once agreed to and signed by all parties.

## **Exhibit No. 2 - INSURANCE**

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit No. 2 prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Addendum including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

### **COMMERCIAL GENERAL LIABILITY:**

X Required by DAS PS \_\_\_ Not required by DAS PS.

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not less than \$\_\_\_1,000,000.00\_ per occurrence. Annual aggregate limit shall not be less than \$\_\_\_2,000,000.00\_.

### **AUTOMOBILE LIABILITY INSURANCE:**

X Required by DAS PS \_\_\_ Not required by DAS PS.

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$\_1,000,000.00 for bodily injury and property damage.

### **PROFESSIONAL LIABILITY:**

\_\_\_ Required by DAS PS X Not required by DAS PS.

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Addendum in an amount not less than \$\_\_\_\_\_ per occurrence. Annual aggregate limit shall not be less than \$\_\_\_\_\_. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

### **ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile Liability insurance required under this Addendum shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Addendum.

### **TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the

effective date of this Addendum, for a minimum of 24 months following the later of (i) Contractor's completion and DAS PS's acceptance of all Services required under this Addendum, or, (ii) The expiration of all warranty periods provided under this Addendum.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to DAS PS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Addendum. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance DAS PS has the right to request copies of insurance policies relating to the insurance requirements in this Addendum.

**NOTICE OF CHANGE OR CANCELLATION:**

The contractor or its insurer must provide at least 30 days' written notice to DAS PS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by DAS PS under this Addendum and to provide updated requirements as mutually agreed upon by Contractor and DAS PS.

**INTENTIONALLY LEFT BLANK**

EXHIBIT NO. 3

CONTRACTOR TAX CERTIFICATION

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Contractor's correct taxpayer identification;

Federal Tax Number 90-0501347

Oregon Tax Number \_\_\_\_\_

2. Contractor is not subject to backup withholding because:

- (i) Contractor is exempt from backup withholding,
- (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or
- (iii) The IRS has notified Contractor that Contractor is no longer subject to backup withholding.

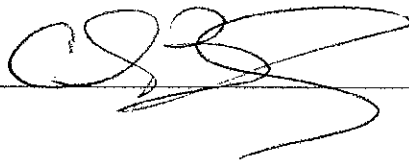
3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Addendum and any Contract, Contractor faithfully has complied with:

- (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor: Vehicle Service Group, LLC.


Signature \_\_\_\_\_



Date: April 27, 2018



**EXHIBIT NO. 4**  
**SAMPLE PURCHASE ORDER**

	<h1 style="margin: 0;">STATE OF OREGON</h1>	PURCHASE ORDER (PO) NO.	PAGE #		
Authorized Purchaser's Authorized Representative		Purchase Order Date			
Contractor Name and Address  Vehicle Service Group LLC Attn: Christine Blitz 2700 Lanier Dr. Madison, IN 47250		Authorized Purchaser's Invoicing Address			
Contractor FEIN	Price Agreement number MA #05316, PA#7667	Authorized Purchaser's Authorized Representative Email Address			
Deliver to Address		Authorized Purchaser's Authorized Representative Phone and Fax Number			
		Delivery Schedule or Delivery Date			
Item	Description	Quantity	U/M	Unit Price	Net Price
				Sub Total	
				Freight	
				Total	
This Purchase Order is subject to Master Agreement #05316, and Participating Addendum #7667. The terms and conditions contained in the Participating Addendum apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.					
Authorized Purchaser's Authorized Representative to Make Purchase				Date	Pa

# EXHIBIT NO. 5

## VENDOR COLLECTED ADMINISTRATIVE FEE (VCAF)/VOLUME SALES REPORT (VSR)

Fields		Data
Price Agreement Number		
Vendor Name		
Reporting Period	Period X	
VCAF Rate or Structure		
Form of e-Payment (Debit /Credit)		
Type of Report (Original, Corrective)	Original	
Vendor/Contact E-mail		
Vendor/Contact Phone		

**General instructions: VCAF Rate/Structure is determined by your contract.**

PO #	Customer Name	Authorized Purchaser	Type of Commodity	Quantity of Items Sold	Unit Cost	Total Value of Line Item	Enter VCAF Amount	Invoice Number	Date of Sale
Total VCAF Fee to CR							0.00		