

**MASTER AGREEMENT # 8497
FORM PARTICIPATING ADDENDUM**

NASPO ValuePoint
PARTICIPATING ADDENDUM



**Facilities Maintenance and Repair &
Operations (MRO) and Industrial Supplies**
Lead by the State of Oregon

Master Agreement #: 8497

Contractor: **Fastenal Company (Contractor)**

Participating Entity: **State of North Dakota**

The following awarded Categories are included in this Addendum:

- Fasteners
- Material Handling
- Plumbing
- Power Sources
- Outdoor Garden
- HVAC
- Hand Tools
- Power Tools (excluding automotive related tools and products)
- Electrical
- Paint
- Security
- Safety

The following awarded Categories are not included in this Addendum:

- Janitorial Equip. & Supplies (does not include Sanitation Cleaning Chemicals)
- Sanitation Cleaning Chemicals (does not include Janitorial Equipment & Supplies)
- Lamps, Lighting, Ballasts

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the **Facilities Maintenance and Repair & Operations and Industrial Supplies** led by the State of Oregon for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of North Dakota. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

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

Contractor

Name:	Monica Nelton
Address:	4730 North Service Drive, Winona, MN 55987
Telephone:	(507) 313-7633
Fax:	(507) 453-7145
Email:	mnelton@fastenal.com

Participating Entity

Name:	Jamie Bostyan
Address:	14th Floor Capitol Tower, 600 E Boulevard Ave, Dept 012
Telephone:	(701) 328-4912
Fax:	(701) 328-1615
Email:	jbostyan@nd.gov

4. Participating Entity Modifications Or Additions To The Master Agreement:

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

Participating Entity must check one of the boxes below.

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

The following changes are modifying or supplementing the Master Agreement terms and conditions.

5. Cumulative Ordering Volume Discounts:

Fastenal is offering an additional cumulative ordering volume discount if total cumulative product spend as reported under contract (inclusive of all Participating Entities within a Participating State) exceeds the volume target established in a given contract year. The additional discount will apply to product category discounts offered. The volume discount excludes market basket priced items. Additional discounts resulting from meeting cumulative ordering volumes will be effective no later than the 1st day of the 14th month (allowing a one-month evaluation period) of the contract for the second year of the contract and run for 12 consecutive months, at which time spend for the next year will be evaluated for minimum spend requirements to achieve the additional volume discount continuation. The maximum additional discount for the life of the contract is 3%. The Cumulative Ordering Volume Discount will be adjusted each contract year to coincide with the 1%, 2%, or 3% discount achieved.

CONTRACT YEAR SPEND of all Purchasing Entities within Participating State	Annual Spend \$1+million	Annual Spend \$2+million	Annual Spend \$3+million
Additional Discount per Spend Level	1%	2%	3%

6. Additional Discounts: The Participating State will take an additional 2% on all categories in lieu of any rebates.
7. Custom Market Baskets: Fastenal offers a Custom Market Basket program. This program allows the Participating State to negotiate 300 items to be added to the market basket and negotiate additional discounts to be applied to these items. The Custom Market Basket may be reviewed annually and updated as required.
8. Coterminous: The term of this Participating Addendum shall be coterminous with the State of Oregon Master Agreement Number 8497 ("Contract").
9. Confidentiality: CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code (N.D.C.C.) ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.
10. Compliance with Public Records Laws: CONTRACTOR understands that, except for disclosures prohibited in this Contract, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE as soon as reasonably possible upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.
11. Spoliation: CONTRACTOR shall notify State of all potential claims that CONTRACTOR is aware of that arise as a result of CONTRACTOR'S performance under this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.
12. Cooperative Purchasing Contract: This Contract is a cooperative purchasing contract established pursuant to N.D.C.C. § 54-44.4-13. This Contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation

providers under N.D.C.C ch. 39-04.2, and the International Peace Garden. Participation in this open-ended Contract is not mandated; therefore, the estimated volume of this Contract is not known.

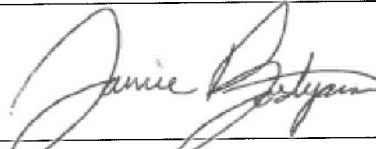

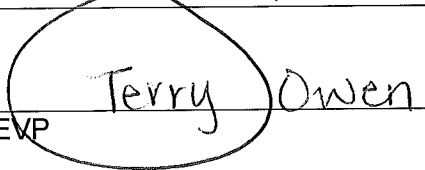
13. Governing Law and Venue: This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
14. Insurance: Contractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:
- a) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
 - b) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$1,000,000 per occurrence.
 - c) Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract.

The insurance coverages listed above must meet the following additional requirements:

- a) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.
 - b) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
 - c) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
 - d) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.
15. Indemnification: The State and Contractor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this Contract.
16. Alternative Dispute Resolution – Jury Trial: STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

17. Attorney Fees: In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.
18. Lease Agreements: Any State agencies, institutions and other eligible participating entities of the Participating Entity may finance their purchase subject to the terms and conditions contained in the Master Price Agreement (including terms and conditions in the incorporated Request for Proposal) or, at the Participating Entity's option, a third party leasing company not associated with Contractor. If a third party lease or financing agreement is entered into, that agreement is separate from this Participating Addendum between Contractor and Participating Entity. Eligible participating entities of the Participating Entity that are subject to N.D.C.C. § 54.44.4 and N.D.A.C. § 4-12-01 require a lease vs. purchase analysis to be completed in accordance with North Dakota Office of Management and Budget (OMB) Fiscal and Administrative Policy 312 – Leases and Lease-Purchase Agreements.
19. Subcontractors: All contractors, dealers, and resellers authorized in the State of North Dakota, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
20. 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 Entity: State of North Dakota	Contractor: Fastenal Company
Signature: 	Signature: 
Name: Jamie Bostyan	Name: 
Title: Procurement Officer	Title: EVP
Date: 1-22-2019	Date: 1/18/2019

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.]***