

VEHICLE LIFTS AND GARAGE ASSOCIATED EQUIPMENT

Led by the State of Washington

Master Agreement #: **05316**

Contractor: **BENDPACK INCORPORATED**

Participating Entity: **STATE OF KANSAS**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers the Vehicle Lifts and Garage Associated Equipment led by the State of Washington for use by State of Kansas 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. **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 Kansas. 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:	Mr. Pat Weber
Address:	1645 Lemonwood Drive, Santa Paula, CA 93060
Telephone:	(805) 933-9970 ext. 174
Fax:	
Email:	pweber@bendpak.com

Participating Entity

Name:	David Stueve
Address:	900 SW Jackson, Suite 451 S, Topeka, KS 66612
Telephone:	785-296-0408
Fax:	785-296-7240
Email:	david.stueve@ks.gov

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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.

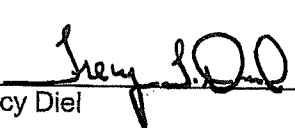
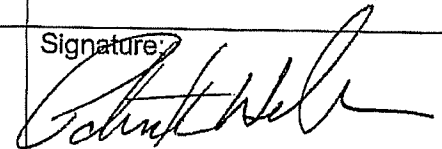
No changes to the terms and conditions of the Master Agreement are required.

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

- a. *The laws of the State of Kansas shall govern this agreement.*
 - b. *State of Kansas Contractual Provisions Attachment, DA-146a has been attached and incorporated into this Addendum and shall take precedence in the Master Agreement.*
 - c. *Reports and Administrative Fees: The Contractor shall submit calendar quarterly reports to the Division of Purchases for all acquisitions, less returned product ("actual, net invoice sales"), made from this Addendum. This report should include as a minimum the agency name, quantity, description and amount. The report will be provided electronically and a check sent payable to the State of Kansas – Office of Procurement and Contracts for an amount equal to one half of one percent (0.5%) of the total actual sales. The report and fee shall be submitted 30 day following the end of the calendar quarter to reports@ks.gov.*
 - d. *A State of Kansas, Tax Clearance Certificate is required to execute this contract.*
5. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of Kansas, 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.
6. **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.

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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 Kansas	Contractor: BendPak Incorporated
Signature: 	Signature: 
Name: Tracy Diel	Name: Mr. Pat Weber
Title: Director of Procurement and Contracts	Title: <i>DIRECTOR OF SALES</i>
Date: <i>1/2/2020</i>	Date: <i>12/23/2019</i>

State of Kansas DA-146a Contractual Provisions Attachment follows next page.

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1. **Contractual Provisions Attachment**
DA-146a Rev. 06/12

1.1. **Terms Herein Controlling Provisions**

It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

1.2. **Kansas Law and Venue**

This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

1.3. **Termination Due To Lack Of Funding Appropriation**

If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

1.4. **Disclaimer Of Liability**

No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

1.5. **Anti-Discrimination Clause**

The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights

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Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

1.6. Acceptance Of Contract

This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

1.7. Arbitration, Damages, Warranties

Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

1.8. Representative's Authority To Contract

By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

1.9. Responsibility For Taxes

The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

1.10. Insurance

The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

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1.11. Information

No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

1.12. The Eleventh Amendment

"The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

1.13. Campaign Contributions / Lobbying

Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.