

**PARTICIPATING ADDENDUM
FOR
NASPO Value Point
Vehicle Lifts and Garage Associated Equipment
Administered by the State of Washington (Hereinafter "Lead State")
Master Agreement No: 05316
(Hereinafter "Master Agreement" or "Contract")
BETWEEN
Vehicle Service Group
(Hereinafter "CONTRACTOR")
AND
The Commonwealth of Virginia
(Hereinafter "PARTICIPATING ENTITY" or "AUTHORIZED USER")

E194-77248**

1. SCOPE

The Participating Entity and Contractor may modify, add, or delete sections of this Participating Addendum as they see fit and documented in writing with the exception of the following:

This participating addendum, hereinafter "Participating Addendum" or "Addendum" or "PA", by and between the Commonwealth of Virginia, through the Department of General Services, Division of Purchases and Supply ("Commonwealth" or "DGS" or "DPS" or "Participating State") and Vehicle Services Group (VSG). ("Contractor" or "Vehicle Services Group"), finalizes and governs the Commonwealth's participation and use of the Master Agreement, executed and administered by the State of Washington for Vehicle Lifts and Garage Associated Equipment, for the benefit and use by all Commonwealth state agencies, institutions of higher education, or any other public body, as defined in § 2.2-4301 entitled "Definitions" and § 2.2-4304 entitled "Joint and cooperative procurement" of the Virginia Public Procurement Act (VPPA).

Further, and as allowable pursuant to Virginia Code 2.2-1120, any such contracts may also be made available for use by certain charitable corporations and private nonprofit 501(c)(3) institutions of higher education, chartered in Virginia. Collectively, all aforementioned Commonwealth parties are to be referred to in the aggregate hereinafter as "Authorized Users".

To ensure maximum transparency and public access to all Commonwealth procurement opportunities, and consistent with Code § 2.2-1110, Contractor agrees that all orders from any Commonwealth Authorized User shall be accepted solely through the Commonwealth of Virginia's central electronic procurement website, "eVA," www.eva.virginia.gov, as delineated with the ordering instructions herein.

Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.

2. CHANGES

The following modifications or additions apply only to contractual actions and relationships within the Participating State. Participating State to check one box.

☐ 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. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.

- B. APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. ANTI-DISCRIMINATION:** Contractor(s) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING:** Contractor certifies that their proposals were made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000:
By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **PAYMENT:**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351.. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:

(1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

- (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- I. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- J. **QUALIFICATIONS OF CONTRACTORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the services/furnish the goods and the Contractor shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Contractor's physical facilities prior to satisfy any questions regarding the Contractor's capabilities. The Commonwealth further reserves the right take any actions in contract or in law, if the evidence submitted by, or investigations of, such Contractor fails to satisfy the Commonwealth that such Contractor is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the Goods described herein.
- K. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- L. **ASSIGNMENT OF PARTICIPATING ADDENDUM:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- M. **CHANGES TO THE PARTICIPATING ADDENDUM:** Changes can be made to the contract in any of the following ways:
 1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- N. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- O. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.
- P. **TRANSPORTATION AND PACKAGING:** Contractor certifies and warrants that all prices are FOB destination, and includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

- Q. **INSURANCE:** Contractor certifies and warrants that it will have and maintain the following insurance coverage at the time the contract is executed. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The contractor further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. **Workers' Compensation -** Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. **Employer's Liability -** \$100,000.
3. **Commercial General Liability -** \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
4. **Automobile Liability -** \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

- R. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- S. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:

- (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
- (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

- b. Refer to Special Term and Condition "eVA Orders and Contracts" to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- T. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- U. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- V. **ORDERS:** Contractor agrees that all purchases under the Contract by any Commonwealth of Virginia Authorized User shall be processed through eVA. Orders that are not processed through eVA are not authorized by this Contract. If the Contractor receives a non-eVA order that purports to be issued under this Contract, then Contractor shall promptly: a) notify the DGS Contracting Officer; b) notify the Authorized User that orders outside of eVA are not made under this Contract and require a separate competitive procurement process under the Virginia Public Procurement Act, and; c) request the Authorized User to resubmit the order through eVA. If the Contractor accepts and fulfills any order that purports to be under this Contract, but where the order has not been processed through eVA, then Contractor shall be in breach of this Contract and shall notify DGS of the occurrence and reimburse DGS for all eVA and SCA fees that would have been generated by placement of the order in accordance with this Contract. Upon the request by DGS, Contractor shall audit and certify its compliance with this section.

Authorized Users may order Products and Services from this Contract by any of the following methods:

- 1) **eVA:** An eVA order issued by an ordering entity of the Commonwealth or Authorized User through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>, where any Authorized User is able to register online and use eVA at no charge.

Any Order placed by a Participating 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.

THIS ORDERING AUTHORITY IS SOLELY LIMITED TO ISSUING ORDERS FOR GOODS AND/OR SERVICES AVAILABLE UNDER THIS CONTRACT. UNDER NO CIRCUMSTANCES SHALL A CONTRACTOR CONSTRUE ANY ORDER TO BE A MODIFICATION TO THIS CONTRACT.

- W. **eVA ORDERS AND CONTRACTS:** This contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the applicable eVA transaction fee assessed for each order.

Vendors desiring to provide goods and/or services to the Commonwealth and all Authorized Users shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dqs.virginia.gov.

- X. **TERMINATION OF ORDERS FOR CONVENIENCE:** Except as otherwise provided in this Contract, the Commonwealth or any Authorized user, at their sole discretion, may terminate an order under this Contract, in whole or in part by giving thirty (30) calendar days written notice, beginning on the second day after mailing to the Contractor. If an Order is so terminated, then the Authorized User shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the Authorized User prior to the effective date of the Order termination. Neither the Commonwealth nor the Authorized User shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the Commonwealth or Authorized User when it is in the best interest of the Commonwealth or the Authorized User.
- Y. **FINAL INSPECTION:** Following the performance of Services or delivery of Products, Contractor shall demonstrate to an Authorized User's representative that all Services are satisfactory to the Authorized User's needs or that all Products, to include all integral and peripheral component parts, are fully operational and fully comply with all Original Equipment Manufacturers' (OEM) product specifications, operating standards, and performance requirements. Any deficiencies shall be promptly and permanently corrected by the Contractor at its sole expense prior to final acceptance by an Authorized User.
- Z. **AUTHORIZED REPRESENTATIVES:** This Contract may be modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so denoted below, or their duly authorized designees. No modifications to this Contract shall be effective unless in writing and signed by the duly authorized representative of both parties, delineated below. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Authorized Representatives:

COMMONWEALTH OF VIRGINIA
 Department of General Services
 Pamela Copeland, VCO
 1111 East Broad Street, 6FL
 Richmond, VA 23219
 Tel: 804-786-3846

VEHICLE SERVICE GROUP (VSG)
 Christine Bilz
 2700 Lanier Drive
 Madison, IN, 7250
 E-mail: bilz@rotarylift.com
 Telephone: 812-273-1622 x5655

UNDER NO CIRCUMSTANCES SHALL ANY AUTHORIZED USER OR OTHER ENTITY HAVE THE AUTHORITY TO MODIFY THIS CONTRACT WITHOUT WRITTEN CONSENT OF THE AUTHORIZED REPRESENTATIVES.

- AA. **EXCLUSIVITY OF TERMS AND CONDITIONS:** No employee or agent of the Commonwealth or of any Authorized User shall be required to sign or execute any additional contract, license or other contractual document containing additional contractual terms and conditions. Any documents signed by persons other than the Director, DPS or his/her authorized designee as identified herein shall have no validity or effect upon the Contract.

- BB. NON-APPROPRIATION:** All funds for payment of Products or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Commonwealth Legislature for items provided under this Contract or by the governing body for any Authorized User, then the Commonwealth or Authorized User will terminate the Order for those Products or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, then the Commonwealth or Authorized User may terminate an Order for Products or Services dependent on such federal funds, without further obligation.

- CC. LOBBYING AND INTEGRITY:** Contractor is cautioned that communications with individuals other than the Contract Officer may result in incorrect and/or insufficient information being provided. In addition, Contractor shall not, in connection with this or any other contract or agreement with the Commonwealth, directly or indirectly: 1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or 2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state or public officer or employee.

Upon request of the Commonwealth, the Contract shall provide any type of information the Authorized User deems relevant to the Contractor's integrity or responsibility to provide the services or goods, described herein.

- DD. NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Participating Addendum or any order issued hereunder, or any act of the Commonwealth or an Authorized User, be a waiver by the Commonwealth of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court within the Commonwealth. This section applies to a claim brought against the Commonwealth only to the extent Congress has appropriately abrogated the Commonwealth's sovereign immunity and is not consent by the Commonwealth to be sued in federal court. This section is also not a waiver by the Commonwealth of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- EE. PERSONAL LIABILITY:** Contractor agree that in no event shall any official, officer, employee or agent of the Commonwealth of Virginia, when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

- FF. CONTRACTUAL DISPUTES:** In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the applicable Authorized User no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the Authorized User's decision on the claim, unless that Authorized User fails to render its decision within thirty (30) days. The decision of the Authorized User shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Commonwealth of Virginia, Department of General Services, its officers, agents and employees, including, without limitation, the Contract Manager and applicable Authorized User, are executing this Contract, or issuing any orders hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth or Authorized User that is purchasing and receiving the Products or Services identified in the Master Agreement or on the subsequent Order executed under this Participating Addendum and need not be joined as a party to any dispute that may arise there under.

In the event of any breach by the Commonwealth, then Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this section. In no event shall Contractor's remedies include the right to terminate any order or support services hereunder.

- GG. **BREACH:** A Contractor shall be deemed in breach of this Contract if the Contractor (a) fails to deliver goods or services on time as previously agreed upon between Contractor and Authorized User (b) fails to comply with any other term of the order or this Contract and fails to cure such noncompliance within ten (10) days (or such greater period as is acceptable to the Commonwealth following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (c) fails to provide a written response to the Commonwealth's Show Cause Notice within ten (10) days after receiving same.

The Contractor shall not be in breach of this Contract if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or services. All costs for the return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth or Authorized User to exercise any remedy available to it be construed as a waiver of or consent to any breach.

- HH. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Commonwealth shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this contract. If funds are unavailable or become unavailable for the purpose of this contract, the Commonwealth may invoke the "Termination of Orders for Convenience" Term and Condition immediately or at a later date, whichever is in the best interest of the Commonwealth.

- II. **PRICE CURRENCY:** All prices shall be in US dollars.

- JJ. **REPORTS:** Contractor's Quarterly Report of Sales: Contractors shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. See attachment to this solicitation for the report template which identifies the information to be provided. Reports shall be provided no later the 15th of the next month following the end of the calendar quarter, reporting total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the contract officer and to the following email address: vssireport@dgs.virginia.gov. Failure to submit information in the required format and time may result in cancellation of the awarded contract.

- KK. **E-VERIFY PROGRAM:** Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous twelve (12) months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

LL. **STANDARDS:** Contractor certifies and warrants that all Products shall meet all 2016 or any current National Fire Protection (NFPA) standards, including but not limited to NFPA Standard 1901: "Standard for Automotive Fire Apparatus," which govern any Product(s) provided by Contractor to any Commonwealth Authorized User, in addition to meeting or exceeding the practices, standards, or other requirements established by the American Fire Apparatus Manufacturers' Association.

MM. **SUBCONTRACTS:** No portion of work shall be subcontracted without the prior written consent of the Commonwealth or Authorized User, as applicable. In the event that the Contractor seeks to subcontract some part of the work specified herein, the Contractor shall furnish the Commonwealth or Authorized User, as applicable, with the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of this Contract.

All of the Contractor's dealers and resellers authorized to do business in the Commonwealth of Virginia shall provide sales, training, and service support to Authorized Users in accordance with the terms and conditions of this Participating Addendum and the Master Agreement.

NN. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing work under this Contract, as Prime Contractor, and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the Prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

OO. **WARRANTY:** Contractor agrees that the Goods and Services furnished under this Contract shall be covered by the most favorable commercial warranties that the Contractor provides to any customer for such Goods or Services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other provision of this Contract. A copy of this Warranty shall be furnished upon the request of the Commonwealth or of any Authorized User.

PP. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a Contractor organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any contractor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the contractor is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the contractor was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

QQ. **SALES AND SUPPORT SERVICE:** The Commonwealth anticipates that this will be a high volume usage contract. The Contractor shall have a full time sales representative assigned to the Commonwealth to make regular calls to assist users, address problems, e-procurement concerns and other matters. The Contractor shall apprise the Commonwealth of any quality issues including recalls, upgrades, and product warnings that may affect product performance and safety. All service representatives must have on-line access to information to provide immediate response to inquiries concerning the status of orders, delivery information, back-order information, statewide contract pricing, and general product information. Representatives shall be available by phone, fax or email. Such contact information shall be provided to the Commonwealth and any ordering entities.

Contractor hereby agrees that it shall market the Master Agreement and this Participating Addendum through the Contractor's sales force or dealer network, which shall be properly trained, engaged and committed to offering the Master Agreement as the Contractor's primary contract offering to all Commonwealth Public Bodies, as Authorized Users of the Agreement. Contractor's compensation and incentives for all sales shall be greater than or equal to the compensation and incentives earned under any other contract that the Contractor offers to any Commonwealth public body.

Contractor shall be responsible for the proactive direct sales efforts of Contractor's Products and Services to all Authorized Users and timely follow-up to sales leads identified by the Contracting Officer. Use of product catalogs, targeted advertising, direct mail and other sales initiatives are encouraged. Contractor's sales materials targeted towards Commonwealth Authorized Users shall include the Commonwealth's electronic procurement "eVA" logo. The Commonwealth shall provide the Contractor with its logo and the standards to be employed in the use of the logo.

Contractor shall assist the Commonwealth by providing camera-ready logos, upon request, and by participating in applicable and relevant Commonwealth supplier exhibitions and conferences. At a minimum, Contractor's communications with Virginia public bodies and sales initiatives shall communicate that (i) the Master Agreement was competitively solicited by the Lead State, (ii) the Master Agreement provides the best available government pricing, (iii) that there is no cost to participating local governments and public body Authorized Users, (iv) that the Master Agreement is a non-exclusive contract, and (v) that the Commonwealth public body, as an Authorized User, may order all Products and Services from the Contractor using the Commonwealth's "eVA" electronic procurement web portal immediately upon the execution of this PA.

RR. **ENTIRE AGREEMENT:** This Contract document and all subsequently issued amendments comprise the entire agreement between the State of Washington and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

SS. **LEASE AGREEMENTS:** Municipal leasing and financing arrangements for the payment of the Contractor's Products and Services are not within the scope of this Contract.

3. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by Commonwealth agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject, according to NASPO ValuePoint policies, to the prior approval of the respective State Chief Procurement Official, defined here as the Director, Division of Purchases and Supply. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

4. **PRIMARY CONTACTS:** Primary contacts for this Participating Addendum are as follows (or their named successors):

A. The Commonwealth of Virginia, Department of General Services

Department of Purchases and Supply
Pamela Copeland
Patrick Henry Building
1111 East Broad Street, 6th Floor
Richmond, Virginia 23219
Telephone: 804-786-4068
E-mail: pamela.copeland@dgs.virginia.gov

B. Contractor

Vehicle Services Group
ATTN: Christine Bilz
2700 Lanier Drive
Madison, IN, 47250
E-mail: bilz@rotarylift.com
Telephone: 800-445-5438 x5655

5. **AMERICAN RECOVERY AND REINVESTMENT ACT of 2009" ("ARRA") COMPLIANCE:** If or when Contractor is notified by an ordering entity that a specific purchase or purchases are being made with ARRA funds, Contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or any subsequent or then current changes or modifications to these requirements as published by the Federal Office of Management and Budget or OMB). The Participating Entity that is issuing orders is responsible for informing Contractor as soon as the Participating Entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the Participating Entity issuing orders with the invoice presented to the Participating Entity for payment. The Contractor, as it relates to purchases under this Contract E194-77248, is not a subcontractor or subgrantee, but simply a provider of Services and related products, provided under the Contract.

6. **ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY:**

A. Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

- 1) The State of Washington's Solicitation document # 05316 with all attachments and exhibits, and all amendments thereto;
- 2) Contractor's response to the State of Washington's Solicitation # 05316;
- 3) The State of Washington Master Agreement # 05316;
- 4) This Participating Addendum ("PA") by the Commonwealth of Virginia;
- 5) The terms and conditions contained on eVA Purchaser Order documents;
- 6) All Contractor or manufacturers' publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials that Contractor has made or makes available to the Commonwealth or Authorized Users and used to affect the sale of the Product and/or Service to an Authorized User.

B. Order of Precedence

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- 1) Applicable Federal statutes and regulations
- 2) Applicable Commonwealth statutes and regulations
- 3) This mutually agreed Participating Addendum
- 4) The Authorized User's eVA Order issued under this PA
- 5) Mutually agreed written amendments to the Washington Master Agreement No: 05316
- 6) The State of Washington Master Agreement No: 05316
- 7) The State of Washington's Solicitation document, with all attachments, exhibits, and amendments thereto.
- 8) The Contractor's response to the State of Washington's Solicitation document
- 9) Any other provision, term, or materials incorporated by reference.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

This Addendum and the Contract, together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Contract, together with its exhibits, shall not be added to or incorporated into this Addendum or the Contract and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating Entity that has executed this Addendum.

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

Signatures as required by Statutes, Rules or Policies of the entity, state or public body, or other legal jurisdiction governing the Participating Entity.

Vehicle Service Group

3005 Highland Parkway, Suite 200
Downers Grove, IL 60515

SIGNATURE: _____

NAME: Christine Bilz

TITLE: Government Sales Leader

DATE: 12/02/19

The Commonwealth of Virginia

Department of General Services
Division of Purchases and Supply

Patrick Henry Building
1111 East Broad Street, 6th Floor
Richmond VA 23219
804-786-4068

Pamela.copeland@dgs.virginia.gov

SIGNATURE: _____

NAME: Pamela Copeland

TITLE: Statewide Sourcing and Contracting Officer

DATE: 1/15/2020

The Commonwealth of Virginia hereby acknowledges execution of this Addendum by the Contractor and Participating Entity listed above. The Commonwealth further acknowledges that the Addendum does not alter the intent of the Master Agreement as indicated in "Listing of Goods and Services"; "Contract Period"; "Pricing Schedule"; "Discount Structure"; and "Reporting Requirements".