



**GROUND MAINTENANCE
EQUIPMENT (2020-2025)**

Led by the Commonwealth of Virginia

Master Agreement #: E194-81037-HT

Contractor: Hustler Turf Equipment Inc.

Participating Entity: **STATE OF KANSAS**

The Contractor shall provide Ground Maintenance Equipment to the Participating Entity as set forth in the Master Agreement for the following category:

- **Category 3 – Off Road Utility Vehicles**

The following categories of products or services are not included in this agreement:

- Category 1: Tractors (heavy duty and compact)
- Category 2: Tractor Towed PTO (Gang Mowers and Single Unit Mowers)
- Category 4: Self Propelled Riding Mowers (Medium Duty Wide Coverage and Zero Turn)
- Category 5: Turf Maintenance (Towed and Ground Driven)

Master Agreement Terms and Conditions:

1. **Scope:** The terms and conditions of the Contractor's NASPO ValuePoint Master Agreement for Ground Maintenance Equipment (2020-2025) led by the Commonwealth of Virginia, remain in full force and effect. This Participating Addendum to the Contractor's Master Agreement allows the addition of specific terms and conditions required by the Participating Entity.
2. **Participation:** This Participating Addendum, as authorized by the Participating Entity's State statutes to utilize the Master Agreement with the prior approval of the State's Chief Procurement Official, may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the Participating Entity's State. Issues of interpretation and eligibility for participation are solely within the authority of that State's Chief Procurement Official.
3. **Term:** The initial term of the Master Agreement shall be for three years and is effective from February 28, 2020 through February 27, 2023, with two optional additional one-year renewals. The term of this Participating Addendum will coincide with the Master Agreement's term in its entirety, including any renewals or extensions.
4. **Pricing:** Any products and/or services ordered under this Participating Addendum shall include the Contractor's Master Agreement negotiated percentage discount off the products and/or services available on the Contractor's current price catalog/list (MSRP/MPL).
5. **Warranty:** All products furnished by the Contractor under this Participating Addendum shall be covered by all commercial warranties the Contractor provides for such products under the Master Agreement.



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

Contractor

Name:	Brian J. O'Donnell
Title:	Government Sales Manager
Address:	200 South Ridge Road
Telephone:	630-669-3070
Email:	bodonnell@excelii.com

Participating Entity

Name:	Todd Herman
Title:	Procurement Officer
Address:	900 SW Jackson Suite 451 S. Topeka, KS 66612
Telephone:	785-296-2375
Email:	todd.herman@ks.gov

7. Participating Entity Additions to the Master Agreement: These additions apply only to actions and relationships within this Participating Addendum:

[X] The following terms and conditions are added to the Contractor's Master Agreement:

- a. The laws of the State of Kansas shall govern this Addendum.
- b. Order of precedence is modified as follows:
 1. State of Kansas Contractual Provisions Attachment, DA-146a attached and incorporated into this Addendum.
 2. This Participating Addendum.
 3. The Master Price Agreement and its Exhibits.

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- c. **Shipping and F.O.B. Point:** Prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price), which means delivered to a state agency's receiving dock without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during regular working hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.
- d. **Political Subdivisions:** Political subdivisions (State Agencies, Cities, Counties, School Districts and etc.) are permitted to utilize contracts administered by Procurement and Contracts. Conditions included in this contract shall be the same for political subdivisions. The State has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision.
- e. **Business Procurement Card:** Agencies may use a Business Procurement Card (Visa) in lieu of a state warrant to pay for its purchases. No additional charges will be allowed for using the card.
- f. **State of Kansas Administrative Fee:** Contractor must pay a half (1/2) percent Administrative Fee to the State of Kansas on all purchases (including political subdivisions) made against this contract. The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas – Procurement and Contracts" and must be paid within 30 days following the end of each quarter.
- g. **Quarterly Reports:** The vendor is required to submit a quarterly report to Procurement and Contracts (reports@ks.gov) detailing all acquisitions made by the State from this contract. This report should include as a minimum the agency name, quantity, description and amount.
- h. **Contract Reference Number:** The above number has been assigned to this Contract and MUST be shown on all correspondence or other documents associated with this Request and MUST be referred to in all verbal communications.
- i. **Termination for Convenience:** The Kansas Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Kansas Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.
- j. **Rights and Remedies:** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State

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shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

- k. **Hold Harmless:** The Contractor shall indemnify the State against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

- l. **Retention of Records:** Unless the State specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

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Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

- m. **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.
 - n. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
 - o. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached, are incorporated by reference and made a part of this contract.
8. **Leasing and Financing:** Procurement and other applicable laws of some Participating Entities may permit the use of leasing or alternative financing methods for the acquisition of products under the Master Agreement. The terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and the Participating Entity. When leasing or using alternative financing methods for this Participating Addendum, the Participating Entity is to follow the policy and guidelines outlined by their purchasing authority or state regulations, statutes, or any other applicable laws.
9. **Subcontractors:** All dealers, resellers, or other subcontractors authorized by the Contractor, as shown on the NASPO ValuePoint website, are approved to provide sales and service support under the Master Agreement. The Contractor's use of subcontractors will be in accordance with the terms and conditions set forth in the Master Agreement.
10. **Orders:** Any order placed by a Participating Entity for a product and/or service available from the 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 Participating Addendum as of the date of execution by both parties below.

Participating Entity: State of Kansas	Hustler Turf Equipment Inc.
Signature: 	Signature: <i>Brian J. O'Donnell</i>
Name: Todd Herman	Name: Brian J. O'Donnell
Title: Procurement Officer	Title: Government Sales Manager
Date: August 04, 2020	Date: 08-04-20

PLEASE NOTE: Fully executed Participating Addendums must be submitted, via email in pdf format, to NASPO ValuePoint at: pa@naspovaluepoint.org
For questions regarding NASPO ValuePoint Participating Addendums, please contact the NASPO ValuePoint Cooperative Contract Coordinators Team at: ccc@napsovaluepoint.org

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1. Contractual Provisions Attachment

DA-146a Rev. 07/19

1.1. Important

This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision: The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof. The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 4th day of August, 2020.

1.2. 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.

1.3. 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.

1.4. 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 thirty (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 ninety (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.

1.5. 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.).

1.6. 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.)

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and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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 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) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

1.7. Acceptance of Contract

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

1.8. 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.

1.9. 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.

1.10. 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.

1.11. 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

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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.

1.12. 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.

1.13. 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."

1.14. 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.