



GROUND MAINTENANCE EQUIPMENT
Led by the State of **Virginia**

Master Agreement #: E194-81037

Contractor: THE TORO COMPANY

Participating Entity: COMMONWEALTH OF VIRGINIA

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

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

Master Agreement Terms and Conditions:

1. **SCOPE:** This addendum covers the Ground Maintenance Equipment Master Agreement led by the State of Virginia for use by 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 Commonwealth of Virginia. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official at the Virginia Department of General Services, Division of Purchases and Supply.
3. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

CONTRACTOR

Name:	The Toro Company Jon Stodola
Address:	8111 Lyndale Avenue South, Bloomington, MN 55420
Telephone:	612-597-3224
Email:	Jon.Stodola@toro.com
Website:	www.toro.com



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PARTICIPATING ENTITY

Name:	Commonwealth of VA Danielle Keeton, Statewide Sourcing and Contracting Officer
Address:	1111 E Broad Street, Richmond, VA 23219
Telephone:	804-225-2948
Email:	danielle.keeton@dgs.virginia.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.

4.1. VIRGINIA PUBLIC PROCUREMENT ACT

The Virginia Public Procurement Act ("VPPA", §2.2-4300 et seq. of the Code of Virginia), including Article 6 (Ethics in Public Contracting), shall apply to any Participating Addendum entered into between the Contractor and a Virginia public entity under the Master Agreement.

4.2. ASSIGNMENT OF PARTICIPATING ADDENDUM

The Participating Addendum shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

4.3. CHANGES TO THE PARTICIPATING ADDENDUM

Changes can be made to the Participating Addendum in any of the following ways:

- A. The parties may agree in writing to modify the terms, conditions, or scope of the Participating Addendum. Any additional goods or services to be

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provided shall be of a sort that is ancillary to the Master Agreement goods or services, or within the same broad product or service categories as were included in the Master Agreement award. Any increase or decrease in the price resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Participating Addendum.

- B. The Purchasing Entity may order changes within the general scope of the Participating Addendum at any time by written notice to the Contractor. Changes within the scope of the Participating Addendum 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 Entity of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Entity's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Entity 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 Entity a credit for any savings. Said compensation shall be determined by one of the following methods:
1. By mutual agreement between the parties in writing; or
 2. By agreeing upon a unit price or using a unit price set forth in the Master Agreement, 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 Entity's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 3. 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 Master Agreement. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Entity with all vouchers and records of expenses incurred and savings realized. The Purchasing Entity

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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 Entity within thirty (30) days from the date of receipt of the written order from the Purchasing Entity. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Participating Addendum 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 Participating Addendum shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Entity or with the performance of the Participating Agreement generally.

4.4. 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 Participating Addendum 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 Participating Addendum 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.

4.5. INSURANCE

The Contractor certifies that it will have the following insurance coverage at the time the Participating Addendum 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 coverages during the entire term of the Participating Addendum 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

- A. 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 Participating Addendum shall be in noncompliance with the Participating Addendum.
- B. Employer's Liability - \$100,000.
- C. 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.
- D. 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 Participating Addendum. Contractor must assure that the required coverage is maintained by the Contractor or third party owner of such motor vehicle.)

4.6. 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.

4.7. CANCELLATION OF PARTICIPATING ADDENDUM

The Commonwealth reserves the right to cancel and terminate any resulting Participating Addendum, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial Participating Addendum period is for more than 12 months, the resulting Participating Addendum may also be terminated by the Contractor, without penalty, after the initial 12 months of the Participating Addendum period upon 60 days written notice to the other party. Any Participating Addendum cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

4.8. eVA ORDERS AND PARTICIPATING ADDENDUM

It is anticipated that the Participating Addendum will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee assessed for each order. Purchasing Entities **must** order goods and/or services available from the Participating Addendum by issuing an order through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this Participating Addendum 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 terminate this Participating Addendum 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@dgs.virginia.gov.

4.9. RENEWAL OF PARTICIPATING ADDENDUM

This Participating Addendum may be renewed by the Commonwealth upon written agreement of both parties for one year/two (2) successive one year periods, under the terms of the current Participating Addendum, and at a reasonable time (approximately 90 days) prior to the expiration.

4.10. EXCLUSIVITY OF TERMS AND CONDITIONS

No employee or agent of the Commonwealth or Purchasing Entity shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions. Any documents signed by persons other than the Director, Division of Purchases & Supply or his/her authorized designee as identified herein shall have no validity or effect upon the Participating Addendum.

4.11. LOBBYING AND INTEGRITY

The Contractor shall not, in connection with this or any other Participating Addendum with the Commonwealth, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Commonwealth of Virginia officer's 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 Contractor shall provide any type of information the Commonwealth deems relevant to the Contractor's integrity or responsibility to provide the services or goods, described in the Master Agreement.

4.12. MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC)

Purchasing charge cards offer Commonwealth of Virginia agencies and public entities the opportunity to streamline their procedures for procuring and paying for small dollar goods and/or services. Contractors should note that acceptance of payment by purchase card is **mandatory**.

Charge Card Levels: The amount of data passed for each charge card payment depends on the level at which the charge card is established. Payment for orders issued against the contract(s) resulting from this solicitation must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. The levels are delineated below and vendors must establish their card account at Level 2, which is mandatory, or Level 3, which is optional. Information on the various levels for the Purchase Card is indicated below.

Level 1 - vendors provide basic charge card purchase information, including but not limited to the data listed below. By passing "Basic Data", the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

Level 2 - vendors provide additional information to the Level 1 elements, including but not limited to the data listed below. By passing Level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accept the Purchasing Card.

- Customer Code (PCO Number from eVA); and
- Vendor Tax ID

Level 3 - vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including but not limited to the data listed below. By passing Level 3 **(optional)** data which is considered "Superior Data", the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity

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- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

4.13. DELIVERY TO CORRECTIONAL INSTITUTIONS

The Contractor shall be responsible for adherence to the following guidelines as they pertain to delivering goods to correctional institutions, especially if the delivery location is within the secured perimeter.

- A. The Contractor shall be responsible for ensuring that all personnel connected with the work comply with the rules and regulations of each ordering agency, which may reach beyond the scope of this Participating Addendum.
- B. The Contractor shall maintain proper security and control over all personnel, equipment, tools and materials at all times. The Contractor's equipment and personnel shall be subject to security checks and associated delays there from.
- C. There shall be no verbal discussion or physical contact between a Contractor's employees and inmates.
- D. Anyone bringing any inmate any item such as weapons, tools, food, drink, clothing, cigarette, matches, correspondence, printed or electronic media or assisting inmates to escape, is in violation of State Law and will result in prosecution.
- E. No weapon, alcohol, drugs or medication of any type is allowed on State property.
- F. Keys shall be removed from all vehicles and other mobile equipment at all times when not in operation. Vehicle doors and tool compartments shall be locked at all times when not in use. Ladders left on vehicles shall be chained and locked at all times.
- G. Any tools, especially any type of cutting tool, if left unattended will be confiscated.
- H. All security regulations shall be observed at all times. These will be made known to the Contractor and his representatives by the Institutional Security Chief or his designee, at the point of entrance to the Institution.
- I. All persons entering the prison complex are subject to being searched.

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- J. Contractors and their representatives are limited to movement to and from and within the immediate area of their work.
- K. An institutional employee may be designated as liaison person between the Contractor and Institution. Unless otherwise stated, this person will be the Department Superintendent for whom the Contractor is performing the service.
- L. Vehicles may not be permitted to leave the facility until after the daily or routine security check has been performed.
- M. All Contractor's employees shall have a valid identification with photograph at all times for identification that is acceptable to the Institution. A valid DMV driver's license is acceptable. No persons will be permitted to enter the Institution without valid identification.

The Agency reserves the right to refuse entrance to anyone who appears, in the Agency's sole judgment, to be under the influence of drugs or alcohol or otherwise is impaired.

4.14. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for completely supervising and directing the work under this Participating Addendum and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this Participating Addendum 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.

4.15. SUBCONTRACTS

No portion of the work shall be subcontracted without prior written consent of the Commonwealth. In the event that the Contractor desires to subcontract some part of the work specified in the Participating Addendum, the Contractor shall furnish the Commonwealth 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 the Participating Addendum.

4.16. WORK SITE DAMAGES

Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this Participating Addendum shall be repaired to the Commonwealth's satisfaction at the Contractor's expense.

4.17. REPORTING REQUIREMENTS AND SURCHARGE ADJUSTMENT (SCA) FEE

- A. CONTRACTOR'S QUARTERLY REPORT OF SALES: Contractor 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. 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 DPS Contracting Officer. Failure to submit information in the required format and time may result in cancellation of the Participating Addendum.
- B. SURCHARGE ADJUSTMENT FEE: The Contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this Participating Addendum. **DGS will not issue invoices or statements.** The Contractor must remit the SCA fee by the last day of the month following the end of the calendar quarter. The SCA fee equals two percent (2%) of the quarterly reported total invoiced sales. The SCA fee amount due must be paid by check with identification of "Contract Number," "Report Amounts," and "Report Period" on either the check stub or other remittance material. DGS may, at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates the agreement, then the payment shall be made by check as described herein.

Checks shall be payable to: Treasurer, Commonwealth of Virginia.

Checks shall be mailed to:

DGS/Division of Purchases and Supply

ATTN: SCA Coordinator

PO Box 1199

Richmond, VA 23218-1199

If the full amount of the SCA fee is not paid within 30 calendar days of due date, it shall constitute a debt that the Contractor is obligated contractually to pay to the Commonwealth of Virginia and the Commonwealth may exercise all rights and remedies available under law. Reports shall be sent to the DPS Contracting Officer and to the following email address: vssireport@dgs.virginia.gov. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in termination or cancellation of the Participating Addendum.



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C. SCHEDULE:

<u>Sales Report Period</u>	<u>Sales Months</u>	<u>Quarterly Report Due</u>
1st Quarter	Jan, Feb, Mar	April 15th
2nd Quarter	Apr, May, June	July 15th
3rd Quarter	July, Aug, Sept	October 15th
4th Quarter	Oct, Nov, Dec	January 15th

<u>SCA Fee Period</u>	<u>Sales Months</u>	<u>Quarterly Payment Due</u>
1st Quarter	Jan, Feb, Mar	April 30th
2nd Quarter	Apr, May, June	July 31st
3rd Quarter	July, Aug, Sept	October 31st
4th Quarter	Oct, Nov, Dec	January 31st

D. The Contractor shall:

1. Meet or conference call at least quarterly with the DPS Contracting Officer to review performance, usage under the contract, and discuss opportunities for improvements.
2. Provide all documentation necessary for any performance audit(s), as requested by the DPS Contracting Officer.
3. Notify the DPS Contracting Officer, in writing, of any unresolved disputes or problems that have been outstanding for more than thirty (30) days.

4.18. "RESERVED"

4.19. PERIOD FOR PERFORMANCE OF PURCHASE ORDERS

To be valid, a purchase order issued under this Participating Addendum must be issued during the term of the Participating Addendum. The period specified for performance of the purchase order may extend past the term of the Participating Addendum. If a notice terminating this Participating Addendum is issued, the notice shall be construed as applying only to the Participating Addendum and not to any existing purchase order, unless the notice expressly states the intent to terminate the purchase order.

4.20. LEASE AGREEMENTS: Commonwealth of Virginia State agencies, institutions, boards and authorities interested in utilizing this Contract to lease equipment must comply with The Department of Treasury, Master Equipment Leasing Program requirements. All other Commonwealth public entities must follow their own procurement regulations.

4.21. SUBCONTRACTORS: All contractors, dealers, and resellers authorized in the Commonwealth of Virginia, 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.

4.22. 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: COMMONWEALTH OF VIRGINIA	Contractor: THE TORO COMPANY
Signature: <i>Danielle D. Keeton</i>	Signature: <i>Brad Hamilton</i>
Name: Danielle Keeton	Name: <i>Brad Hamilton</i>
Title: Statewide Sourcing and Contracting Officer	Title: <i>Group Vice President</i>
Date: 5/15/2020	Date: <i>5/15/2020</i>

For questions on executing a participating addendum, please contact:

NASPO VALUEPOINT

Cooperative Development Coordinator:	Jerilyn Bailey
Telephone:	850-296-0002
Email:	jbailey@naspovaluepoint.org

CONTRACTING OFFICER, PLEASE EMAIL FULLY EXECUTED PDF COPY OF THIS DOCUMENT TO PA@NASPOVALUEPOINT.ORG TO SUPPORT DOCUMENTATION OF PARTICIPATION AND POSTING IN APPROPRIATE DATA BASES.