

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**
Administered by the State of Washington (hereinafter "Lead State")

**MASTER PRICE AGREEMENT
Evenflo Company, Inc.**
Washington Contract Number: 01910
(hereinafter "Contractor")

And
Kansas Department of Health and Environment - Nutrition and WIC Services
(hereinafter "Participating Entity")

Page 1 of 3

1. **Scope:** This addendum covers the WSCA Breast Pumps Contract lead by the State of Washington, for members of WSCA or NASPO, for use by Participating Entity's programs, including Women, Infants & Children Programs office.

2. **Participation:** Use of specific WSCA or NASPO cooperative contracts by other agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Participating Entity Modifications or Additions to Master Price Agreement:**
(These modifications or additions apply only to actions and relationships within the state in which the Participating Entity is located.)

3.1 The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

4. [Purposely left blank.]

5. **Primary Contacts:** The primary contact individuals for this participating addendum are as follows (or their named successors):

Lead State Contract Administrator

Name: Melissa Cox, Contracts Specialist
Address: Department of General Administration, Office of State Procurement
210 11th Ave SW Rm 201
Olympia, WA 98504-1101
Voice: (360) 902.7439
Fax: (360) 586.2426
E-mail: mcox@ga.wa.gov

Contractor

Name: Susan Vogtsberger
Address: Evenflo, Inc., 475 Half Day Road, Suite 200, Lincolnshire, IL 60069
Voice: (847) 964-2628
Fax: 847-793-0169
E-mail: Susan.Vogtsberger@ameda.com

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**
Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT
Evenflo Company, Inc.
Washington Contract Number: 01910
(hereinafter "Contractor")

And
Kansas Department of Health and Environment - Nutrition and WIC Services
(hereinafter "Participating Entity")

Page 2 of 3

Participating Entity

Name: Kansas Department of Health and Environment - Nutrition and WIC Services
Attn: Martha Hagen
Address: 1000 SW Jackson, Ste. 220
Telephone: 785-291-3161
Fax: 785-296-1326
E-mail: mhagen@kdheks.gov

6. [Purposely left blank.]

7. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract #01910" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, monthly payment (if appropriate), itemized list of items being purchased, & rates of the service being used

8. Price Agreement Number: All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: [00000000000000000000000035462] and the Lead State price agreement number: 01910.

This Participating Addendum and the Master Price Agreement number 01910 (administered by the State of Washington) 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 Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement 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 Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

Purposely left blank.

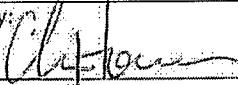
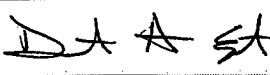
**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**
Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT
Evenflo Company, Inc.
Washington Contract Number: 01910
(hereinafter "Contractor")

And
Kansas Department of Health and Environment - Nutrition and WIC Services
(hereinafter "Participating Entity")

Page 3 of 3

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

Participating Entity: <u>STATE OF KANSAS</u>	Contractor: Evenflo Company, Inc.
By: 	By: 
Name: <u>CHRIS HOWE</u>	Name: <u>DUSTIN EPSTEIN</u>
Title: <u>DIRECTOR OF PURCHASES</u>	Title: <u>VICE PRESIDENT</u>
Date: <u>2-6-11</u>	Date: <u>2/15/11</u>

[Additional signatures as required by Participating Entity]

CONTRACTUAL PROVISIONS ATTACHMENT

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. 1-01), 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 _____ day of _____, 20_____.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
- 2. Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of 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.
- 4. Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutory required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas 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.
- 10. Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State 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 vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."