

## WSCA PARTICIPATING ADDENDUM AMENDMENT

Amendment #2	Original Contract CMS (CLIN) # (N/A)	Amendment CMS # 54419
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### 1) PARTIES

This **Amendment** to the above-referenced Original **Participating Addendum** (hereinafter called the "**Addendum**") is entered into by and between **Mohawk Resources LTD.** (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the **Department of Personnel and Administration, State Purchasing Office** (hereinafter called the "SPO").

### 2) EFFECTIVE DATE AND ENFORCEABILITY

This **Amendment** shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

### 3) FACTUAL RECITALS

The Parties entered into the Contract to provide products and services for **vehicle lifts and related garage equipment** to Colorado State Agencies, local governments, and specifically approved non-profit organizations.

The original **Participating Addendum** dated 9/17/07 has been amended by **Amendment #1** dated 8/1/08. All equipment warranties shall remain in effect from date of purchase of equipment.

By this **Amendment**, the parties desire to: extend the term of the contract and shall incorporate **Exhibit 1, Additional Terms and Conditions**.

### 4) CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this **Amendment**. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the **Addendum** and any modification thereto were effective) as part consideration for this **Amendment**. If applicable, such Special Provisions are attached hereto and incorporated by reference herein as **Exhibit A, Additional Terms and Conditions, §17 Colorado Special Provisions**.

### 5) LIMITS OF EFFECT

This **Amendment** is incorporated by reference into the **Addendum**, and the **Addendum** and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

### 6) MODIFICATIONS.

The **Addendum** and all prior amendments thereto, if any, are modified as follows:

- a. Add **Exhibit A, Additional Terms and Conditions**, attached hereto and incorporated herein.

- b. **Original Participating Addendum, A. Scope** (page 1 of 4): In the first sentence of the first paragraph, delete "for State Agencies and political subdivisions" and replace with "for Colorado State Agencies, political subdivisions, and eligible non-profit organizations or other authorized entities."
- c. **Original Participating Addendum, C. Primary Contact** (page 1 of 4): Delete in its entirety and replacement of terms is incorporated within **Exhibit A, Additional Terms and Conditions**.
- d. **Original Participating Addendum**, delete the following in its entirety and replacement of terms is incorporated within **Exhibit A, Additional Terms and Conditions**:
  - 1. Order of Precedence (page 2 of 4);
  - 2. Definitions (page 2 of 4);
  - 3. Venue (page 2 of 4);
  - 4. Software Piracy Prohibition (page 2 of 4);
  - 5. Usage Reporting Requirement (page 2 of 4);
  - 6. Standard insurance Requirement (pages 2, 3, and 4 of 4 pages)
  - 7. Vendor Offset (page 4 of 4);
  - 8. Non-appropriation Clause (page 4 of 4); and
  - 9. Illegal Aliens – Public Contracts for Services and Restrictions on Public Benefits (page 4 of 4).
- e. **WSCA Participating Addendum Amendment #1** (dated 8/1/2008): In **Section 6, Amendments, Part a, Addition of a new Section entitled State Administrative Fees**, delete in its entirety and replacement of terms is incorporated within **Exhibit A, Additional terms and Conditions**.

#### 7) **START DATE**

This **Amendment** shall take effect on the later of its Effective Date or **March 26, 2013**.

#### 8) **ORDER OF PRECEDENCE**

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this **Amendment** and any of the provisions of the **Addendum**, the provisions of this **Amendment** shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the **Addendum** or any amendment shall always control other provisions in the **Addendum** or any amendments.

#### 9) **AVAILABLE FUNDS**


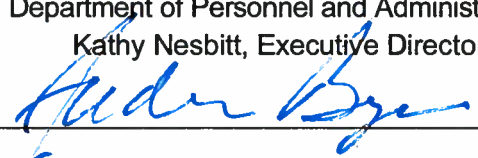
Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

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

**THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM**

\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Participating State is relying on their representations to that effect.

<p align="center"><b>CONTRACTOR</b> <b>Mohawk Resources, Ltd.</b></p> <p>By: Steven Perlstein Title: President</p> <p> _____ Signature</p> <p>Date: <u>3/26/13</u></p>	<p align="center"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> Department of Personnel and Administration Kathy Nesbitt, Executive Director</p> <p>By:  _____ -or- <input checked="" type="checkbox"/> Judson Byrn, State Purchasing Director -or- <input type="checkbox"/> Carol Pfarr, Director Finance &amp; Procurement</p> <p>Date: <u>3/27/2013</u></p>
	<p align="center"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____ Print Name:: _____ -or- Assistant Attorney General</p> <p>Date: _____</p>

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Addendum is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
David J. McDermott, CPA

By:   
\_\_\_\_\_  
Date: 3/28/13

-or- ☐ RaLea Sluga, Central Contracts Unit Manager  
-or- ☒ Greg Garner, Contracts Administrator  
-or- ☐ Clark Bolser, Contract Specialist

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**STATE OF COLORADO**  
**Exhibit A**  
**with**  
**Mohawk Resources, Ltd.**

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**1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This **Addendum** shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (the "Effective Date"). The Participating State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**2. DEFINITIONS.**

**Defined Terms:** Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in **Exhibit A** to this **Addendum** and the **WSCA Master Agreement**. The following terms as used herein shall be construed and interpreted as follows:

- A. Chief Procurement Official.** "Chief Procurement Official" means the Director of the State Purchasing Office, Colorado Department of Personnel and Administration.
- B. Contract.** "Contract" means the integrated agreement consisting of this **Addendum**, the **WSCA Master Agreement**, their respective attachments, and any Orders issued in connection therewith.
- C. Contractor.** "Contractor" means the Company or individual awarded a contract as a result of the WSCA award. Same as "vendor", "selected Offeror", "successful Offeror", or "awarded vendor".
- D. Environmentally Preferable.** "Environmentally Preferable" means products or services having a lesser or reduced adverse effect on human health and the environment when compared with competing products/services serving the same purpose CRS §24-103-207.5, May 25, 2007).
- E. Equipment.** "Equipment" means vehicle lifts and related garage equipment and is synonymous with "supplies", "products", or "goods", and shall refer to any category of Equipment not specifically excluded within the **WSCA Master Agreement**.

- F. **Executive Director.** "Executive Director" means the Executive Director of the Colorado Department of Personnel and Administration.
- G. **Goods.** "Goods" shall have the meaning ascribed to it in the Uniform Commercial Code.
- H. **Institution of Higher Education.** "Institution of Higher Education" means a university or college located in the State of Colorado, which is supported by the State.
- I. **Non-Profit.** "Non-Profit" means a non-profit organization that has contacted the Colorado State Purchasing Office, met the non-profit organization eligibility as a 501(c)(3), and obtained an annually registered, assigned number, in accordance with CRS §24-110-101.
- J. **Order.** "Order" means any purchase order, contract, or other authorized agreement used to order the Equipment priced in the **WSCA Master Agreement** and under this **Addendum**. An Order amended consistent with the requirements of any Ordering Entity and accepted by Contractor shall be governed by the terms/conditions of the original Order, except as amended.
- K. **Ordering Entity.** "Ordering Entity" means a State Agency, a Political Subdivision, a non-profit organization, or other authorized entity within the Participating State that places an Order.
- L. **Parties.** "Parties" means the Participating State and Contractor.
- M. **Political Subdivision.** "Political Subdivision" means any Colorado governmental entity such as cities, towns, counties, special districts, etc. Political Subdivisions of the State of Colorado may either (i) execute a separate addendum with Contractor, but to the extent any terms of such addendum incorporate additional terms, Contractor shall not be obligated to execute or accept such addendum or (ii) issue an order in accordance with the terms of this **Addendum**.
- N. **RFP.** "RFP" means **Request for Proposal 06405**, issued by the State of Washington, lead State.
- O. **Services.** "Services" means the services (other than products or supplies) priced in the **WSCA Master Agreement** which can be ordered by an Ordering Entity.
- P. **State Agency.** "State Agency" means any department, agency, or Institution of Higher Education of the State of Colorado; not including Political Subdivisions of the State of Colorado.
- Q. **State Purchasing Agent.** "State Purchasing Agent" means the Participating State's purchasing agent identified in this Addendum, or such other purchasing agent as the Participating State's Chief Procurement Office may designate, from time to time, by written notice to Contractor and the Lead State.
- R. **State Purchasing Office.** "State Purchasing Office" means the Colorado Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office.
- S. **Uniform Commercial Code.** "Uniform Commercial Code" means the Uniform Commercial Code as enacted in the State of Colorado, CRS §4-1-101 et seq.

### 3. TERM AND ORDERS.

- A. **Term.** The Parties' respective performances under this **Addendum** shall commence on the **Effective Date** and shall terminate on **March 31, 2014**, or the termination of the **WSCA Master Agreement**, unless terminated sooner.

The State may unilaterally require continued performance for a period of one (1) additional 12-month period concurrently with the extension of the term of the **WSCA Master Agreement** at the same rates and same terms specified in the **Addendum** as amended. If the State exercises this option, it shall provide written notice to Contractor prior to the end of the current **Addendum** term in form substantially equivalent to **Exhibit B (Sample Option Letter)** (each an "Option Letter"). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this **Addendum**. The total duration of this **Addendum**, including the exercise of any options under this clause, shall not exceed 3/15/2015.

Continuation of this **Addendum** beyond the initial term is a State prerogative and not a right of the Contractor. This prerogative will be exercised only when such continuation is clearly in the best interest of the State.

**B. Orders.** Orders may be placed consistent with the terms of this **Addendum** during the term specified in §3(A) above. Orders placed by State Agencies must comply with **Colorado State Fiscal Rule 2-2-4**. All Orders for Equipment issued pursuant to this **Addendum**, at a minimum, shall include:

- i. Order date, when the Order was placed by the Ordering Entity;
- ii. A brief description of the Equipment being purchased, including item number and quantity;
- iii. The place and time of delivery;
- iv. The billing address;
- v. The complete name of the Ordering Entity, the name, phone number, and address of the Ordering Entity's representative (example for State Agency designation: "Colo. Dept. of Transportation" or "CDOT" is acceptable with the Division or Unit name as additional identifier);
- vi. The price by item and the total amount of the Order for Equipment being purchased;
- vii. The **WSCA Master Agreement Number: 06405** issued by the State of Washington, lead State; and
- viii. The Participating State's statewide Price Agreement Number: **07544YYY01M/WSCA**.

Unless otherwise agreed in writing, any Equipment ordered pursuant to this **Addendum** shall be delivered freight on board (F.O.B.) destination to the location specified in the Order. The Ordering Entity shall inspect and accept Equipment within 72 hours of deliver. The Ordering Entity shall not be deemed to have accepted any Equipment until such Equipment has been inspected in accordance with the specifications and is accepted by the Ordering Entity. Title to Equipment shall pass to the Ordering Entity upon acceptance of delivered items.

Orders under this **Addendum** may be placed at any time prior to the termination hereof. All Orders must be placed prior to the expiration date of the **Addendum**, but may have a delivery date or performance period up to 120 days past the then-current expiration date of this **Addendum**. Financial obligations of State Agencies and Political Subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The Ordering Entity is obligated to pay for all Equipment ordered and delivered by Contractor. Equipment ordered, but not delivered by Contractor and upon Ordering Entity's direction, shall either be delivered and promptly paid for by Ordering Entity, or if Ordering Entity is unable to pay for the Equipment, then the order shall be immediately cancelled.

Notwithstanding the expiration or termination of this **Addendum** or the **WSCA Master Agreement**, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this **Addendum**, or otherwise inconsistent with its terms.

Orders for any indefinite quantity task order, or other form of indefinite delivery order arrangement priced under the **WSCA Master Agreement** shall not be placed after the expiration or termination of this **Addendum**, notwithstanding the term of any such indefinite delivery order agreement.

#### **4. MODIFICATIONS TO WSCA MASTER AGREEMENT.**

For the purposes of this **Addendum**, the **WSCA Master Agreement** is modified as follows:

- A. Insurance. **WSCA Master Agreement, Contract Requirements, 1. Certificate of Insurance** (pages 17 and 18 of 28) is deleted in its entirety and **Section 12 Insurance** of this **Exhibit A** is substituted in lieu thereof.
- B. Reports. **WSCA Master Agreement, Contract Requirements, 2. Reports** (page 19 of 28) and **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph REPORTS** (page 22 of 28) is each deleted in its entirety and **Section 7 Reports** of this **Exhibit A** is substituted in lieu thereof.

- C. Contractor Performance. In addition to the **WSCA Master Agreement, Contract Requirements, 4. Contractor Performance** (page 20 of 28), **Section 14 Statewide Contract Management System** of this **Exhibit A** is incorporated hereto.
- D. Taxes. **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph TAXES** (page 21 of 28) is deleted in its entirety and **Section 6 Taxes** of this **Exhibit A** is substituted in lieu thereof.
- E. Limited Liability (Patents, Copyrights, Etc.) The following shall be added at the end of **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph PATENTS, COYRIGHTS, ETC.** (page 21):  

"Contractor's liability for intellectual property infringement shall not be limited."
- F. Termination. **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph TERMINATION** (page 21 of 28) and **DEFAULT AND REMEDIES** (page 22 of 28) is each deleted in its entirety and **Section 5 Termination** and **Section 10 Remedies Not Involving Termination** of this **Exhibit A** is substituted in lieu thereof.
- G. Orders. **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph ORDER NUMBERS** (page 22 of 28) is deleted in its entirety and **Section 3 Term and Orders, section A. Order** of this **Exhibit A** is substituted in lieu thereof.
- H. Governing Law and Venue. **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph GOVERNING LAW AND VENUE** (page 22 of 28) is deleted in its entirety and **Section 15, general Provisions, A. Modification** of this **Exhibit A** is substituted in lieu thereof.
- I. Delivery. In **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph DELIVERY** (page 23 of 28), in the first paragraph and at the end of the first sentence, delete "WSCA state agency or political subdivision", replace with "Colorado State Agencies, political subdivisions, and eligible non-profit organizations or other authorized entities."
- J. Amendments. In addition to the **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph Amendments** (page 23 of 28), **Section 15, B. Modification** of this **Exhibit A** is incorporated hereto.
- K. Assignment/Subcontract. In addition to the **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph Assignment/Subcontract** (page 23 of 28), **Section 11 Assignment and Subcontracts** of this **Exhibit A** is incorporated hereto.
- L. Payment. In addition to the **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph PAYMENT** (page 24 of 28), **Section 9 Payment to Vendor** of this **Exhibit A** is incorporated hereto.
- M. Administrative Fees. In addition to the **WSCA Master Agreement, Exhibit A, WSCA Standard Contract Terms and Conditions, paragraph MANAGEMENT FEE** (page 25 of 28), **Section 11 Administration Fee** of this **Exhibit A** is incorporated hereto.



## 5. TERMINATION.

**A. Termination for Default.** The State Purchasing Office may terminate this **Addendum** or a Ordering Entity through its designated procurement officer (or other "Authorized Representative") may terminate an Order for default, and such termination shall be governed by this provision.

### i. Default.

a) If Contractor refuses or fails to timely perform any of its obligations under the provisions of this Contract, the State Purchasing Office may notify Contractor in writing of the non-performance, and if not corrected within thirty (30) days of issuance of such notice, the State Purchasing Office may terminate this **Addendum**, in whole or in part. Contractor shall continue performance of the **Addendum** to the extent it is not terminated.

b) If Contractor refuses or fails to timely perform any of its obligations under the provisions of any Order, with such diligence as will ensure its completion within the time specified in the Order, the Authorized Representative may notify Contractor in writing of the non-performance, and if not corrected within thirty (30) days of issuance of such notice, such Authorized Representative may terminate Contractor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Contractor shall continue performance of the Order to the extent it is not terminated.

ii. **Contractor's Duties.** Notwithstanding termination of the Contract and subject to any directions from the Authorized Representative, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the Ordering Entity has an interest (if any).

iii. **Compensation.** Payment for Services performed and accepted by the Ordering Entity shall be at the Contract price. The Ordering Entity may withhold amounts due to Contractor as the Authorized Representative deems to be necessary to protect the Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Ordering Entity for the excess costs incurred in procuring similar goods and services.

iv. **Erroneous Termination for Default.** If after notice of termination of Contractor's right to proceed under the provisions of this paragraph, it is determined for any reason that Contractor was not in default under the provisions of this paragraph, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for the public interest section.

### B. Termination for the Public Interest.

i. **Participating Addendum.** The Participating State is entering into this **Addendum** for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this **Addendum** ceases to further the public policy of the State, the State Purchasing Office, in its sole discretion, may terminate this **Addendum** in whole or in part. Exercise by the Participating State of this right shall not constitute a breach of the Participating State's obligations hereunder.

This subsection shall not apply to a termination of this **Addendum** by the Participating State for cause or breach by Contractor, which shall be governed by §5(A) above or as otherwise specifically provided for herein. The State Purchasing Office shall notify Contractor of such termination in writing. The notice shall specify the effective date of the termination and whether it affects all or a portion of this **Addendum**.

- ii. **Orders.** Unless otherwise agreed, the Authorized Representative, when the interests of the Ordering Entity so require, may terminate any Order, in whole or in part, for the public interest of the Ordering Entity, provided only that such termination will not relieve such Ordering Entity from its obligations with respect to any Services already delivered to or used by such Ordering Entity. The procurement officer shall give at least thirty (30) days prior written notice of the termination to Contractor specifying the part of the Order terminated and when termination becomes effective. Termination for the public interest of all or any portion of an Order shall not constitute a breach of this Contract by the Ordering Entity.
- iii. **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination. Contractor will stop work to the extent specified. Contractor must still complete and deliver to the Ordering Entity the work not terminated (if any) by the notice of termination.
- iv. **Compensation.** Contractor shall submit a termination claim specifying the amounts due because of the termination for the public interest together with cost or pricing data bearing on such claim.

**C. Termination for Convenience.** This Addendum may be terminated by either the Participating State or Contractor upon sixty (60) days prior written notice. Such notice shall be effective upon receipt of written notice. Upon notice of termination, no Orders may be accepted by Contractor with performance periods extending beyond the effective date of termination. Termination for Convenience shall not affect the Ordering Entity's payment obligations. However, subject to the right of the Ordering Entity to terminate, or as otherwise agreed between the Ordering Entity and Contractor, Contractor shall perform obligations consistent with the Contract for Orders in effect on the effective date of the termination.

**D. Notice and Cure Period.**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided above. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §5 above or §10 below. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Addendum in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**6. TAXES.**

- A. Taxes for the Participating State and State Agencies.** Taxes for The Participating State and State Agencies are exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all Colorado State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. The Participating State's tax exemption number is 98-02565. Such exemptions apply when materials are purchased or services are rendered to benefit the Participating State or State Agencies; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the Participating State or a State Agency. Contractor shall be solely liable for paying such taxes as the Participating State is prohibited from paying or reimbursing Contractor for such taxes.
- B. Taxes for a Colorado Political Subdivision, Non-profit or other Authorized Entity.** For a Colorado Political Subdivision, non-profit, or other authorized entity it is solely responsible for its own tax requirements and is to provide its own Federal Tax ID and Tax Exemption numbers upon Vendor's request.

## 7. REPORTS.

A. **Volume Reports.** The Participating State intends to use the centralized method of volume reporting directly to WSCA/NASPO as it is proposed by WSCA/NASPO. Contractor shall furnish sales reports 15 days after the end of each calendar quarter. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of any given year. Contractor must provide a report detailing the total sales for the period to Ordering Entities within the Participating State; which shall be in a format such as Excel format. Additionally, Contractor must provide a Summary Report which shall be in a format such as Word format. Reports to be sent via email to the Participating State's Primary Contact identified in **§3 of the Addendum**, or to the Participating State's assigned replacement Contact. Specifically, the reports must include:

1. **Total Sales Dollars:** The Total Sales Dollars spent by each entity group for State Agencies, Institutions of Higher Education, Political Subdivisions, and SPO-approved Non-Profit Organizations in conjunction with the price agreement for the given quarter. Amounts are to be totaled individually for each of the four (4) entity groups specified and totaled for all groups.
2. **Total Regular (List) Pricing of Total Sales:** The Total Regular (List) Pricing of Total Sales spent by each entity group for State Agencies, Institutions of Higher Education, Political Subdivisions, and SPO-approved Non-Profit Organizations in conjunction with the price agreement for the given quarter. Amounts are to be totaled individually for each of the four (4) entity groups specified and totaled for all groups.
3. **Total Estimated Cost Savings:** The Total Estimated Cost Savings by each entity group for State Agencies, Institutions of Higher Education, Political Subdivisions, and SPO-approved Non-Profit Organizations on the price agreement for the given quarter. Amounts are to be totaled individually for each of the four (4) entity groups specified and totaled for all groups.
4. **Total Paid by Procurement Card:** The Total Paid by Procurement Card by each entity group for State Agencies, Institutions of Higher Education, Political Subdivisions, and SPO-approved Non-Profit Organizations on the price agreement for the given quarter. Amounts are to be totaled individually for each of the four (4) entity groups specified and totaled for all groups.
5. **Total Green Sales:** The Total Green Sales, meaning Environmentally Preferable products, by each entity group for State Agencies, Institutions of Higher Education, Political Subdivisions, and SPO-approved Non-Profit Organizations on the price agreement for the given quarter. Amounts are to be totaled individually for each of the four (4) entity groups. (Environmentally Preferable products, including applicable discount savings, as such defined in Participating State's Environmentally Preferable Purchasing Policy. *Note:* in most cases, "Green" products have been third party registered or certified such as EPA, NFP, Energy Star, etc. and totaled for all groups.
6. **Amount of WSCA Administration Fee:** The Amount of WSCA Administration Fee due to the Participating State. If the foregoing requirements cannot be met by using the WSCA/NASPO reporting method, Contractor shall be required to provide Colorado specific reporting in the form set forth on the website of the State Purchasing Office:  
<https://www.gssa.state.co.us/PriceAwd.nsf/Forms+Info+Pages?OpenView> .

Any modifications made to the volume report requirements will be a collaborative effort between the Participating State and the Contractor. The needs of the Participating State, however, shall be the primary factor considered in determining reporting requirements.

On a quarterly basis, the State shall assist the Contractor in identifying the Ordering Entity as a State Agency, Institution of Higher Education, a Political Subdivision, and/or an authorized Registered Non-profit Organization. Once identified, the Contractor shall make adjustments to the customer's account profile. In the event a quarterly report submitted by the Contractor contains discrepancies, when notified by the State, the Contractor shall make necessary modifications and resubmit reports in a timely manner, as needed.

- B. Additional Reports.** Contractor also shall be required to provide a comprehensive sales history at the end of each calendar year of this **Addendum** or within 15 days of request from the State Purchasing Office. The comprehensive sales reports shall set forth the quantity of services and user sold, description, unit price and extended dollar amount.

Failure to provide these reports shall constitute cause for cancellation of this **Addendum** and may disqualify Contractor from the award of future price agreements by the Participating State. If requested, Contractor also shall provide detailed reports to any State Agency, Political Subdivision, or Non-Profit entity eligible to be a Ordering Entity under this **Addendum**.

## **8. ADMINISTRATION FEES.**

- A. Fees and Due Dates.** The Colorado General Assembly has authorized the State Purchasing Office to collect a fee for the administration of statewide contracts. Contractor shall be permitted to adjust the pricing under the **WSCA Master Agreement** to include the Participating State's administration fee by adding the fee to the **WSCA Master Agreement price** of each Equipment product on the invoice.

On a quarterly basis, Contractor shall return to the Participating State a **fee of 1.00 %** (.0100 multiplication factor) of the total sales within the Participating State by all Ordering Entities during that quarter, to assist with the cost of contract administration by the Participating State. The administration fee shall be remitted to the Participating State within **fifteen (15) days** of the end of each quarter.

Fees shall be made payable to the Colorado State Treasurer by a check submitted to the Participating State's Primary Contact identified in **§15 (P)** below or to the Participating State's assigned replacement Contact. The quarter periods and report/payment submission dates of any given year are:

<u><b>Quarter End Dates</b></u>	<u><b>Payment and Report Due Dates</b></u>
January 1 to March 31	April 15
April 1 to June 30	July 15
July 1 to September 30	October 15
October 1 to December 31	January 15.

Contractor shall provide a report setting forth the total sales to State Agencies and other Ordering Entities within the Participating State in accordance with **§7** above. The report and a check in the amount of the administration fee due and owing shall be submitted to the Participating State on or before the **15th day** after the end of the quarter.

Contractor shall be permitted to adjust the pricing under the **WSCA Master Agreement** to include the Participating State's administration fee by adding the fee to the **WSCA Master Agreement price** of each Equipment product on the invoice.

- B. Mandatory or Permissive Agreement.** The Statewide Price Agreement shall be "mandatory" and State Agencies subject to the Participating State's Procurement Code shall be required to satisfy requirements through the Statewide Price Agreement. Exceptions may be granted by the Director of the State Purchasing Office on application by the State Agency involved.

This “mandatory” Statewide Price Agreement is not an exclusive price agreement to a specific vendor and the State of Colorado reserves the right to create multiple “mandatory” price agreements. While Political Subdivisions and eligible Non-profit Organizations may order from this **Addendum**, whether the agreement is designated as “mandatory” or “permissive” for such entities shall be at the discretion of each Political Subdivision or Non-profit Organization.

#### 9. PAYMENT TO VENDOR.

All Ordering Entities issuing valid Orders shall be bound by the terms and conditions of the **Addendum**, including, without limitation, the obligation to pay Contractor for Services.

**A. Discounts.** Any applicable cash discount period or delinquency period shall start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable Services at the specified destination by an authorized representative of the Ordering Entity, whichever is later.

#### **B. Payments.**

Ordering Entities:

For the Participating State's State Agencies and Institutions of Higher Education. The Participating State's State Ordering Entity shall fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the Ordering Entity.

Uncontested amounts not paid by the Ordering Entity within 45 days may bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the Ordering Entity separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

For Political Subdivisions or Other Authorized Entities of the Participating State. For purchases made by Political Subdivisions or Other Authorized Entities of the Participating State, the State makes no guarantee and further cannot guarantee payment terms for Political Subdivisions or other authorized entities and the Ordering Entity is solely responsible for timely payment. Vendors are to send invoicing directly to the Ordering Entity. As the State's minimum payment terms are net thirty (30) days, it is expected that the Ordering Entity will honor payment terms which customarily are paid within thirty days. Ordering Entities have historically remitted payment in a timely manner; however, it is the vendor's responsibility to confirm all payment terms with each Ordering Entity at the time an order is placed.

**C. Remittance.** Payments from State Agencies will be remitted by mail or via the Participating State's "Purchasing Card." Payments from other Ordering Entities will be remitted by mail or as otherwise agreed by Contractor and such Ordering Entity. Payments shall be submitted to Contractor at the address shown on the invoice, as long as Contractor has exercised due diligence in notifying the Participating State and the Ordering Entity of any changes to that address.

#### 10. REMEDIES NOT INVOLVING TERMINATION.

In addition to other remedies provided for in the WSCA **Master Agreement**, this **Addendum** or any Order, and without limiting its remedies otherwise available at law, the Ordering Entity may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in the Contract.

Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by contractor. These remedial actions are as follows:

- A. **Suspend Performance.** Suspend Contractor's performance pending necessary corrective action as specified in writing by the Ordering Entity without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- B. **Withhold Payment.** Withhold payment to Contractor until the necessary Services or corrections in performance are satisfactorily completed or the Order has been terminated; and/or
- C. **Removal of Contractor Employee/Agent.** Request the removal from work on the Order of employees or agents of Contractor whom the Ordering Entity justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract is contrary to the public interest; and/or
- D. **Deny Payment.** Deny payment for those Services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed or if performed would be of no value to the Ordering Entity. Denial of the amount of payment for such non-performed Services or obligations must be reasonably related to the amount of work or performances lost to the Ordering Entity and must be described in writing; and/or

The above remedies are cumulative and the Ordering Entity, in its sole discretion, may exercise any or all of them individually or simultaneously. Except as otherwise provided for by law or this Addendum, the rights and remedies of the Ordering Entities shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages.

#### 11. **ASSIGNMENT AND SUBCONTRACTS.**

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the Participating State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

#### 12. **INSURANCE.**

Contractor shall, and shall cause its subcontractors to, obtain and maintain insurance as specified in this section at all times during the term of this **Addendum**. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies with an A.M. Best rating of A-VII or better.

##### A. **Contractor.**

###### i. **Public Entities.**

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this **Addendum** such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the Participating State, if requested by the Participating State. Contractor shall require each contract with a subcontractor that is a public entity, to include the insurance requirements necessary to meet such subcontractor's liabilities under the GIA.

###### ii. **Non-Public Entities.**

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this **Addendum** insurance coverage and policies meeting the same requirements set forth in this **§12(B)** below with respect to subcontractors that are not "public entities".

**B. Contractors – Subcontractors.**

Contractor shall require each contract with subcontractors other than those that are public entities, providing goods or services in connection with this **Addendum**, to include insurance requirements substantially similar to the following:

- i. **Worker's Compensation.**  
Worker's Compensation Insurance as required by Participating State statute, and Employer's Liability Insurance covering all of Contractor or subcontractor employees acting within the course and scope of their employment.
- ii. **General Liability.**  
Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.
- iii. **Automobile Liability.**  
Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
- iv. **Additional Insured.**  
The Participating State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any subcontractors hereunder.
- v. **Primacy of Coverage.**  
Coverage required of Contractor and subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the Participating State.
- vi. **Cancellation.**  
The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the Participating State's Primary Contact identified in §3 above of the **Addendum**, or to the Participating State's assigned replacement Contact within seven days of Contractor's receipt of such notice.
- vii. **Garage Liability including Garage Keepers Legal Liability**  
A certificate evidencing coverage with a minimum limit of \$100,000 and to include loss of use of state operated vehicle(s).

**C. Certificates.**

Contractor shall, and shall cause all subcontractors to, provide certificates showing insurance coverage required hereunder to the Participating State within seven business days of the Effective Date of this Addendum. Prior to the expiration date of any such coverage, Contractor and each subcontractor shall deliver to the Participating State certificates of insurance evidencing renewals thereof. In addition, upon request by the Participating State at any other time during the term of this Addendum or any subcontract, Contractor shall supply and shall require each subcontractor to supply, within 10 days of such request, to the Participating State a certificate of insurance evidencing compliance with the provisions of this §12.

**13. CONFIDENTIAL INFORMATION.**

Contractor shall comply with the provisions of this §13 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and other records or information concerning individuals. To facilitate Contractor's efforts to protect confidential information, it shall be marked as "confidential" by the Participating State or designated as "confidential" by the State at the time of disclosure. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

**A. Confidentiality.** Contractor shall keep all Participating State confidential information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State confidential information in the possession of Contractor shall be immediately forwarded to the State Purchasing Agent.

**B. Notification.** Contractor shall notify its agent, employees, subcontractors and assigns who may come into contact with Participating State confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

**C. Use, Security, and Retention.** Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this **Addendum** or approved in writing by the Participating State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this **Addendum** or approved in writing by the Participating State.

**D. Disclosure-Liability.** Disclosure of Participating State confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the Participating State, a Ordering Entity or their respective agents. Contractor shall indemnify, save, and hold harmless the Participating State, the Ordering Entities and their respective employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to this **§13**.

#### **14. STATEWIDE CONTRACT MANAGEMENT SYSTEM.**

If the maximum aggregate amount payable to Contractor under this **Addendum** is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§14** applies. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on Colorado State contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Addendum, Colorado State law, including CRS §24-103.5-101, and Colorado State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Addendum shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and rating shall be rendered within 30 days of the end of the Addendum term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director, upon request by the State Purchasing Office, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts.



Contractor may contest the final Evaluation, Review and rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

## 15. GENERAL PROVISIONS.

**A. Jurisdiction and Venue.** All suits or actions related to this **Addendum** shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

### **B. Modification.**

i. By the Parties. Except as specifically provided in this **Addendum**, modifications of this **Addendum** shall not be effective unless agreed to in writing by both Parties in an amendment to this **Addendum**, properly executed and approved in accordance with applicable Colorado State law and Fiscal Rules. Modifications permitted under this **Addendum**, other than contract amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law. This **Addendum** is subject to such modifications as may be required by changes in federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this **Addendum** on the effective date of such change, as if fully set forth herein.

**C. Order of Precedence.** The provisions of this **Addendum** shall govern the relationship of the Participating State and Contractor. In the event of conflicts or inconsistencies between this **Addendum**, the **WSCA Master Agreement** and their respective exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. **Section 17 of this Exhibit A (Colorado Special Provisions);**
- ii. The remaining portions of this **Exhibit A**;
- iii. The remaining portions of this **Addendum**;
- iv. The **WSCA Master Agreement**;
- v. The **WSCA Master Agreement, Exhibit A, WSCA Standard Terms and Conditions**; and
- vi. An Order.

**D. Conflicts of Interest.** Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this **Addendum**, even the appearance of a conflict of interest is harmful to the Participating State's interests. Absent the Participating State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Participating State hereunder.

If a conflict or appearance of a conflict exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Participating State a disclosure statement setting forth the relevant details for the Participating State's consideration. Failure to promptly submit a disclosure statement or to follow the Participating State's direction in regard to the apparent conflict constitutes a breach of this **Addendum**.

- E. Litigation Reporting.** Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency related to this **Addendum** or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the Participating State's State Purchasing Agent at minimum via email of such action and deliver copies of such pleadings to the State Purchasing Agent. If a State Purchasing Agent is not then serving, such notice and copies shall be delivered to the Chief State Procurement Official.
- F. Severability.** Provided this **Addendum** can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this **Addendum** in accordance with its intent.
- G. Survival of Certain Contract Terms.** Notwithstanding anything herein to the contrary, provisions of this **Addendum** requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Participating State if Contractor fails to perform or comply as required.
- H. Waiver.** Waiver of any breach under a term, provision, or requirement of this **Addendum**, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- I. Licenses, Permits, Etc.** Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this **Addendum** without reimbursement by the Participating State. Additionally, all employees, agents, and subcontractors of Contractor performing Services under this **Addendum** shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of the **Addendum** is a material breach by Contractor and constitutes grounds for termination of this **Addendum**.
- J. Doing Business in Colorado.** Contractor and its authorized dealer/distributors shall register with the Colorado Secretary of State in accordance with CRS §7-90-801, and must obtain a rating of "good standing" status and maintain it throughout the term of this **Addendum**. A copy of Contractor's Articles of Incorporation and/or Bylaws may be requested by the Participating State.
- Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of such certification shall be a material breach by Contractor and constitutes grounds for termination of this **Addendum**.
- K. Offender Registry Check.** If in the course of doing business a Contractor's employee or its authorized dealers/distributors visits a Participating State facility that has as clients children under the age of 21 on the premises, Contractor shall complete a sex offender registry check on each such employee prior to such employee going to any such Participating State facility. In the event a Contractor's employee is on the registry, such employee shall not be sent to a Participating State facility and will not be admitted to such facility. Link to access the Colorado Department of Public Safety's website: <http://cdpsweb.state.co.us/> (CRS §16-22-110, Sex Offender Registry.)

- L. Sex Federal Employer Identification Number (FEIN).** Contractor shall submit its F.E.I.N. prior to purchase order issuance and as directed by the Office of the State Controller. Contractor shall also provide a completed W-9, Taxpayer Identification form, to the Participating xxx
- M. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("ARRA") and FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2004 ("FFATA").** If or when a Ordering Entity places an Order using ARRA or FFATA funds, the Ordering Entity shall immediately notify the Contractor and such Order shall include the "State of Colorado Supplemental Provisions for Contracts, Grants, and Orders Using Funds Provided Under the American Recovery and Reinvestment Act of 2009" or the "State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Orders Subject to the Federal Funding Accountability and Transparency Act of 2006," as applicable, and as such provisions may be modified from time to time.

The provisions are available on the website of the Colorado State Controller at: [http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA\\_Main\\_Page.htm](http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm) for ARRA and for FFATA at: <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>. The Ordering Entity must comply with all federal and state reporting requirements for the use of ARRA and FFATA funds. Contractor shall provide the required report to the Ordering Entity with the invoice presented to the Ordering Entity for payment. The Parties acknowledge that Contractor, for purchases under this **Addendum**, is not a subcontractor or subgrantee, but a provider of goods and related services.

- N. CORA Disclosure.** To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

- 16. Notices, Primary Contact, and Authorized Representatives:** The primary contact individuals for this **Addendum** are as follows: Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**Lead State:** **State of Washington, Department of Enterprise Services**  
**Name:** Steve Hatfield, Contract Administrator  
**Address:** 1500 Jefferson St. SE  
**City, State:** Olympia, WA 98501-2355  
**Telephone:** 360-407-9276 FAX: 360-586-2426  
**E-mail:** [Steve.Hatfield@des.wa.gov](mailto:Steve.Hatfield@des.wa.gov)

**Contractor:** **Mohawk Resources, Ltd.**  
**Name:** Steve Perlstein,  
**Address:** 65 Vrooman Ave.,  
**City, State:** Amsterdam, NY 12010-0110  
**Telephone:** 518-842-1431 Ext.24 FAX: 518-842-1289  
**E-mail:** [sperlstein@mohawklifts.com](mailto:sperlstein@mohawklifts.com)

**Participating State:** **State of Colorado, DPA/State Purchasing Office**  
**Name:** Cheri Miller, Purchasing Agent  
**Address:** 633 17<sup>th</sup> Street, Suite 1500  
**City, State:** Denver, Colorado 80202-3609  
**Telephone:** 303-866-4005 FAX: 303-894-7445  
**E-mail:** [cheri.miller@state.co.us](mailto:cheri.miller@state.co.us)

**17. COLORADO SPECIAL PROVISIONS** (*Revised 1/1/09*)

These Special Provisions apply to all contracts except where noted in *italics*.

**A. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

**B. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**D. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

**E. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

**G. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

**H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

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EXHIBIT B**SAMPLE OPTION LETTER**

<b>Date: X</b>	<b>Original Contract CMS #: X</b>	<b>Option Letter # X</b>	<b>CMS Routing # X</b>
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- 1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.
- a. Option to renew only *(for an additional term)*
- 2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:
- a. **For use with Option 1(a):** In accordance with [cite the section/paragraph of the **Original Contract**] between the **State of Colorado, [Division or Unit]** and **[Contractor]**, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at the same rates and same terms specified in the Original Contract, as amended. Unless specified in this Option Letter, there shall be no change to the current contract value as a result of this extension to the term.
- b. **Multiple Amendments or Options Exercised:** In the event more than one amendment to the Contract occurs, the the Contract shall have been amended as follows: [cite all amendments to the contract by CMS routing number(s), the type of transaction(s), the effective date of the transaction(s), the amount of the transactoin(s),a nd the total to date..]
- 3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or others delegated; whichever is later

<b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> Department of Personnel and Administration Kathy Nesbitt, Executive Director
By: _____ <div style="text-align: center;">-or- Judson Byrn, State Purchasing Director</div> Date: _____
<b>LEGAL REVIEW</b> John W. Suthers, Attorney General
By: _____ Print Name: _____ <div style="text-align: center;">-or- Assistant Attorney General</div> Date: _____

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Addendum is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
David J. McDermott, CPA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  

-or- Delegated Signatory