

## NASPO VALUEPOINT PARTICIPATING ADDENDUM AMENDMENT

Amendment #3	Original Contract CMS (CLIN) # (N/A)	Amendment CMS # 80736
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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 **Addendum** to provide products and services for **vehicle lifts and related garage equipment** to Colorado State Agencies, political subdivisions, eligible non-profit organizations, and other authorized entities. The **Addendum** represents a **State Price Agreement (#07544YYY01M/WSCA)** and **CORE #2015-0000-0000-0130**.

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. The **Addendum** was further amended by **Amendment #2 (CMS #54419)** effective 03/28/2013; **Option Letter #1** (CMS 65143) effective 02/04/2014; and **Option Letter #2** (CMS #77563) effective 03/20/2015.

By this **Amendment**, the parties desire to: add a definition for WSCA's new nomenclature, extend the term of the contract, amend the not-to-exceed term, and allow for future NASPO ValuePoint Master Agreement extensions.

### 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**.

### 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. **Exhibit A, Section 2, Definitions** (page 1 and 2 of 17 pages):

Add a definition for "WSCA" to incorporate the recent change in nomenclature. Therefore, after sub-Section "S. Uniform Commercial Code" definition, **add** a new definition and it shall read as follows:

**"T. WSCA/NASPO ValuePoint.** "WSCA" meaning the Western State Contracting Alliance has changed its name to "NASPO ValuePoint", meaning the National Association of State Procurement Officials, and became effective in March 2015."

**b. Exhibit A, Section 3. Terms and Orders, Section A. Term** (page 2 of 17 pages):

Extend the term through 12/31/15, add a new clause to address the possible future extensions of the NASPO ValuePoint (previously "WSCA") Master Agreement, and extend the term beyond 5 years. Therefore, delete section "3.A. Term" in its entirety and replace with new paragraphs and they shall read as follows:

**"A. Initial Term-Work Commencement.**

The Parties' respective performances under this Price Agreement shall commence on the Effective Date. This Price Agreement shall terminate on **12/31/2015** (the "Option Limit Date"), unless terminated sooner, as specified in **§15 (Remedies)**, or extended further as specified in **§3.A.i**, below. Except as stated in **§3.A.i**, below, the total duration of this Addendum including the exercise of any options to extend shall not exceed the Option Limit Date.

- i. **NASPO ValuePoint Master Agreement Extensions.** If the NASPO ValuePoint Master Agreement is extended beyond the Option Limit Date of this Addendum, the State, upon authorization from its State Purchasing Director, shall have the option to unilaterally require continued performance of the Contractor for a period up to the extended termination date of the NASPO ValuePoint Master Agreement. Upon authorization from the State Purchasing Director, an election by the State to exercise an option to extend beyond the Option Limit Date shall be by written notice to Contractor before the end of the then current Contract term in a form substantially equivalent to **Exhibit B (Sample Option Letter)**. The State's option to require continued performance of the Contractor beyond the Option Limit Date as provided in this paragraph may be exercised via multiple, consecutive Option Letters with durations as determined by the State but in no event extending beyond the extended term of the Master Agreement. If exercised, the provisions of such Option Letter shall become part of, and be incorporated into, this Addendum. Continuation of this Addendum beyond the Option Limit Date as provided in this paragraph is a State option and not a Contractor right.

**7) START DATE**

This **Amendment** shall take effect on the later of its Effective Date or **July 1, 2015**.

**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**

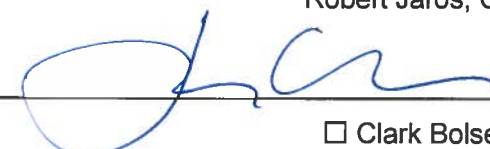
\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the **Participating State** is relying on their representations to that effect.

<p><b>CONTRACTOR</b> <b>Mohawk Resources, Ltd.</b></p> <p>By: Steven Perlstein Title: President</p> <p> *Signature</p> <p>Date: <u>9/12/15</u></p>	<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> Department of Personnel and Administration State Purchasing Office June Taylor, Executive Director</p> <p>By: <u>Molly Randol</u></p> <p><input type="checkbox"/> Cindy Lombardi, State Purchasing &amp; Contracts Director</p> <p><input checked="" type="checkbox"/> Molly Randol, Strategic Sourcing Manager</p> <p>Date: <u>6.17.15</u></p>
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**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**  
Robert Jaros, CPA, MBA, JD

By:  Date: 06-24-15

☐ Clark Bolser, Controller Delegate

☐ Greg Garner, Controller Delegate

☐ Floy Jeffares, Controller Delegate

☒ Joe Weber, Controller Delegate

