

Amendment No. 1 to PO-10700-00015855

This is Amendment No. 1 to PO-10700-00015855, dated May 12, 2023, as amended from time to time (“Master Agreement”) between the State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services (“DAS PS”), as the Lead State, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities and Landscape Structures Inc. (“Contractor”). This Amendment is effective on the date signed by all parties and upon receipt of all approvals necessary for signing (“Amendment Effective Date”).

RECITALS

The purpose of this Amendment is:

1. Modification to Section 1 Master Agreement; Order of Precedence
2. Modification of Section 5 Pricing
3. Modification to Section 7.6 Order Form Requirement
4. Modification to Section 14.3 Assignments/Subcontractors
5. Modification to Exhibit 3 Description of Goods and/or Services and Discount Percentages

The Master Agreement is amended as follows:

1. Section 1 Master Agreement; Order of Precedence of the Master Agreement is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):
 - 1.1 This Agreement consists of the following and shall read as set forth in Section 1.3 below:
 - 1) The general Master Agreement terms and conditions, less their Exhibits;
 - 2) Exhibit 4 – Provisions Required by Federal Law, as may be applicable for a specific Contract;
 - 3) Exhibit 1 – NASPO ValuePoint Master Agreement Terms and Conditions;
 - 4) Exhibit 3 – Description of Goods and/or Services, Prices, and Discount Percentages;
 - 5) Exhibit 2- Sample Participating Addendum (“PA”)
 - 6) Exhibit 5 – NASPO ValuePoint Detailed Sales Report Form
 - 7) **Exhibit 6- Authorized Resellers**
2. Section 5 Pricing is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

5. Pricing

Except as provided in this Section, during the term of the Master Agreement, Contractor shall offer Goods and/or Services to Purchasing Entities at the discount percentage listed in Exhibit 3. The discount percentage will remain the same (or increase) throughout the term of the Master Agreement, including any renewals. The discount percentage may never decrease.

The Lead State may conduct an annual audit the Contractor’s website or request past customer orders from the Contractor or any Participating Entity to ensure that the Contractor’s prices are at the discount percentage off MSRP, as list in Exhibit 3 of the Master Agreement or higher than the percentage off in the Master Agreement. If an error is found, the Lead State will contact the Contractor and request a change be made within 30 Calendar Days or earlier of the finding. The Lead State reserves the right to audit the website at any time if a need arises.

~~All prices and rates are guaranteed for the initial term of the Master Agreement. Commencing after the initial term of the Master Agreement, Contractor may request price increases no more than two times a calendar year. Contractor must submit a request to the Lead State at least 60 days before the proposed effective date of the increase. The request must include sufficient documentation supporting the request~~

(PPI Standard <https://www.bls.gov/PPI/> which includes but not limited to screen shots of current PPI Standard and manufactures letters) that is acceptable to the Lead State.

Contractor may request for Goods and/or Services to be added or deleted every 6 months (unless special circumstances arise) as approved by the Lead State. The Lead State may prohibit goods on this Master Agreement for environmental health or performance reasons. All Goods and/or Services added will be at the same discounts listed Exhibit 3, Description of Services and Discount Percentages.

6. Section 7.6 Order Form Requirements of the Master Agreement is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number **and that the Terms and Conditions of the Master Agreement take precedence over Authorized Resellers Terms and Conditions.**

7. Section 14.3 Assignments/Subcontracts of the Master Agreement is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

14.3 Assignment/Subcontracts

14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of Master Agreement contract administration duties, to NASPO ValuePoint and other third parties.

14.3.3 **The Lead State hereby approves the list of Authorized Resellers in Exhibit 6, attached hereto, as approved resellers. Any conflicting terms and conditions by these Authorized Resellers are not applicable as the terms and conditions of the Master Agreement take precedence. The Master Agreement number must be referenced on all quotes, invoices and packing slips.**

8. Exhibit 3 Description of Goods and/or Services and Discount percentages, sub section 1.2 Percentage off per Category Awarded; of the Master Agreement; is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

1.2 PERCENTAGE OFF PER CATEGORY AWARDED

Category: **Percentage off all items in Category:**

Indoor & Outdoor Fitness Equipment: 6%

Outdoor Furniture: 6%

Park Site Furnishings: 6%

Safety and Surfacing: 6%

Shelters and Shades: 6%

Waterparks (Spray & Splash): 5%

Waterparks (Spray & Splash), Aquatix Design and Mechanicals: 1%

Electronic Play (Audio & Visual & Touch): 6%


Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the Amendment Effective Date and with the same effect as though made at the time of this Amendment.

Certification:

Any individual signing on behalf of Contractor has the authority and knowledge to make the following certifications, and hereby certifies under penalty of perjury:

- a. the number set forth in the contract is Contractor correct taxpayer identification number;
- b. Contractor is not subject to backup withholding because:
 - i. Contractor is exempt from backup withholding;
 - ii. Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - iii. the IRS has notified Contractor that Contractor is no longer subject to backup withholding.
- c. in the event that Contractor is a general partnership or joint venture, that Contractor signature(s) on this Amendment constitute certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Amendment.

CONTRACTOR, Landscape Structures Inc.

By: 
 Title: Contract Administrator
 Date: 6/19/23
 FEID # 41-971842

STATE OF OREGON, acting by and through its Department of Administrative Services, Procurement Services

By: 
 Title: DAS PS Procurement Manager
 Date: 6/22/2023

Approved pursuant to ORS 291.047

By: Karen Johnson via email
 Assistant Attorney General

Date: June 8, 2023
 Matter number: GF-1365-21