

PARTICIPATING ADDENDUM

SOURCEWELL

**HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES,
ATTACHMENTS, AND SUPPLIES**

**Sourcewell an Agency of the State of Minnesota
(hereinafter "Lead Entity")**

**Master Agreement
Contract Number: 032119- CAT**

**Caterpillar Inc / J A Riggs Tractor Company
(hereinafter "Contractor")**

and

**State of Arkansas
Contract No. SP-21-0009 / 4600047327
(hereinafter "Participating State/Entity")**

1. SCOPE:

This participating addendum (PA) covers the Sourcewell contract for Heavy Construction Equipment with Related Accessories, Attachments, and Supplies administered by the Lead Entity for use by State agencies and other entities located in the State of Arkansas as authorized by that State's statutes to utilize cooperative contracts. .

2. PARTICIPATION:

All eligible purchasers within the State of Arkansas, including State agencies, K-12 educational institutions, and local public procurement units (cities, counties, municipalities), are authorized to purchase products under the terms and conditions of this participating addendum.

3. INDIVIDUAL CUSTOMER:

Each state agency and political subdivision, as a Participating Entity, that purchase products/services shall be treated as if they are Individual Customers. Except to the extent modified by the State of Arkansas Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the State has in the Master Agreement and this Participating Addendum. Each agency and political subdivision shall be responsible for their own charges, fees, and liabilities. Each agency and political subdivision shall have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor shall apply the charges to each Participating Entity individually.

4. ORDER OF PRECEDENCE:

- A. Arkansas's Participating Addendum (PA); Arkansas's Participating Addendum shall not diminish, change, or impact the rights of the Lead Entity with regard to the Lead Entity's contractual relationship with the Contractor under the Terms of the Lead Entity's Master Agreement.
- B. Lead Entity's Master Agreement (includes negotiated Terms & Conditions)
- C. The Solicitation including all Addendums; and
- D. Contractor's response to the solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead Entity and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. Notwithstanding the foregoing, ordering documents (purchase orders) may contain transaction-specific terms and each ordering document that is accepted by the Contractor shall become a part of this Agreement as to the products and services listed on the ordering document only. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or

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in similar documents subsequently provided by the Contractor (unless such terms are referenced in the Master Agreement).

5. PAYMENTS AND INVOICE PROVISIONS:

Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the Agency. The Participating State may not be invoiced in advance of delivery and acceptance of any products or services. Payment will be made only after the Contractor has successfully satisfied the ordering agency as to the goods and/or services purchased, rented or leased. Contractors should invoice the ordering agency by an itemized list of charges. Purchase Order Number and/or Contract Number should be referenced on each invoice.

Payments will be submitted to the Contractor at the address shown on the invoice. Payment should be tendered to the Contractor within thirty (30) days of the date of invoice. After the sixtieth (60th) day from the date of the invoice, unless mutually agreed to, interest may be paid on the unpaid balance due to the Contractor at the rate of one half of one percent per month in accordance with Arkansas Code Annotated §19-11-224. The Purchasing Entity will make a good-faith effort to pay within thirty (30) days after date of invoice. Payments may also be made via a Purchasing Entity's Purchasing Card ("P-Card"). The State shall have the right to dispute billed goods or services and withhold payment for those goods or services that are in dispute. Interest shall not be charged on disputed amounts while in dispute.

Contractor shall ensure that all invoices are sent directly to the State agency or local public procurement unit that purchased products from them.

All invoices should be forwarded to:

Agency Name
Attention: Accounts Payable
Address
City, Arkansas Zip Code

6. PURCHASE ORDER INSTRUCTIONS:

All Participating Entities issuing valid purchase orders within the jurisdiction of this Participating Addendum should include the following

- A. Sourcewell Master Agreement number: 032119-CAT
- B. State contract number: SP-21-0009 / 4600047327
- C. Agency Name, Address, Contact, and Phone-Number
- D. Applicable approvals
- E. Orders shall be made out to the Contractor or Reseller

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The Purchasing Entities shall not be required, by the Contractor or its subcontractors, to sign any additional terms and conditions when utilizing this Agreement.

The parties acknowledge and agree that orders submitted to the Contractor from a Participating Entity through the Participating Entity's business P-Card are authorized purchase orders under the, Sourcewell, Master Agreement 032119- CAT.

7. CONVENIENCE FEE:

A. Convenience Fee

Contractor shall remit a convenience fee in the amount of one percent (1%) of all Contract Sales made to the State, State Departments, and to local entities as defined in Arkansas Code Annotated § 19-11-206 (i.e. local governments, cities, counties, school districts, water districts, and other participants, collectively "State"). The convenience fee is based on Contractor invoice date and is effective upon the date of execution of this addendum. Contract Sales is defined as gross sale amounts less credits, taxes, regulatory fees and separately stated shipping charges not included in the unit prices. The State, at its sole discretion, may expand the applicability of this fee after providing notice to Contractors.

Unit prices are inclusive of the convenience fee and Contractor is not to charge the fee directly to the State in the form of a separate line item. Contracts shall not have separate or different prices for State Agency customers and local entities as defined in Arkansas Code Annotated § 19-11-206 participants.

B. Quarterly Reporting and Fee Remittance

Contractor shall submit a Sales Report documenting all contract sales, made to the State and such submission, including any supplemental information submitted, is deemed public record.

The Sales Report shall be submitted, and the related convenience fee shall be remitted no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report must contain the following information:

1. Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter
2. Purchasing entity
3. Total of Convenience Fee amount due
4. Such other information as the State may reasonably request
5. If no Sales were made to State during the reporting quarter, then a report shall be submitted showing zero sales and zero convenience fees due.

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C. Payment of Convenience Fee

The Contractor shall timely remit Convenience Fee via Automated Clearing House (ACH) transactions, unless otherwise directed by State, to the bank account directed by the State. Failure to remit convenience fees timely and accurately in accordance with State requirements may result in Contractor's goods and services being made ineligible for purchase by State or any other recourse available, including contract cancellation, or as further provided for by law.

D. Retention and Inspection of Records

The Contractor shall keep records of Sales to State in sufficient detail to enable the State to determine the Convenience Fee payable by the Contractor. State may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. In the event that such examination reveals underpayment of the Convenience Fee, the Contractor shall immediately pay to the State the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor shall reimburse the State for the cost of the audit.

8. RECORD RETENTION:

Financial and accounting records relevant to State of Arkansas transactions under this Addendum shall be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the expiration date and final payment under this Addendum or extension thereof, provided, however, that such government authorities will provide thirty (30) days written notice to the Contractor of its intent to conduct such examination contemplated by this section.

9. GOVERNING LAW:

The laws of the State of Arkansas shall govern this agreement. Nothing under this agreement or the Master Agreement shall be deemed or construed as a waiver of the State's right to sovereign immunity.

10. VENUE AND JURISDICTION:

Venue for any claim, dispute, or action concerning an order placed against the contract shall be Pulaski County, Arkansas. Any claims against the State, whether sounding in tort or in contract, shall be brought before the Arkansas State Claims Commission as provided by Arkansas law, and shall be governed accordingly.

11. TAXES:

Personal Property tax will not be charged to Arkansas state agencies.

12. TRAVEL EXPENSES:

Expenses for travel shall not be reimbursed unless specifically permitted under the duties of the Contractor. All

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travel must be approved in advance by the State. Approved expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with Arkansas Travel Guidelines and Procedures.

13. CANCELLATION:

- A. **For Convenience.** The State may cancel this Agreement for any reason by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.
- B. **For Cause.** The State may cancel this Agreement for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the Agreement, and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The parties may endeavor to agree to reasonable modifications in the Agreement to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.
- C. If upon cancellation the Contractor has provided services which the State has accepted, and there are no funds legally available to pay for the services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

14. INDEMNIFICATION:

The following indemnification clause replaces in its entirety the Indemnification Clause specified in the Master Agreement.

INDEMNIFICATION – The Contractor shall be fully liable for the actions of its agents and employees, partners, and subcontractors and shall fully indemnify, defend, and hold harmless the Purchasing Entity and the State, and their officers, agents, and employees from suits, actions, damages, and costs of every name and description, including reasonable attorney's fees arising from or related to personal injury and damage to real or personal property, alleged to be caused in whole or in part by the Contractor, its agents, or employees, partners, and subcontractors. Language in this clause shall not be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, shall be brought before the Arkansas State Claims Commission as provided by Arkansas law, and shall be governed accordingly. This section is not subject to any limitations of liability in the Master Agreement or in any other document executed in conjunction with the Master Agreement.

15. CONFIDENTIAL INFORMATION:

Under Arkansas law, the release of public records is governed by The Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Statutes.

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16. CONTINGENT FEE:

The Contractor guarantees that Contractor has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.

17. DISCLOSURE:

Under Arkansas law, OSP is required to have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor shall submit the disclosure form prior to entering into this Addendum. Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this PA. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the State.

18. RESTRICTION OF BOYCOTT OF ISRAEL:

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity shall not enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in, a boycott of Israel. By signing this Participating Addendum, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

19. VENDOR REGISTRATION:

In order to receive payment, Contractor must register online at <https://www.ark.org/vendor/index.html>

20. TERMS:

The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with Arkansas law.

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21. PRIMARY CONTACTS:

The primary contacts for this participating addendum are as follows (or their named successors):

Lead Entity

Name:	Sourcewell
Contact Person:	Maureen Knight
Address:	202 12 th St. NE, Staples, MN 56479
Telephone:	218-895-4114
E-Mail:	maureen.knight@sourcewell-mn.gov

Contractor

Company Name:	Caterpillar Inc.
Contact Person	Tirena Pavelka
Address:	100 NE Adams St., Peoria, IL 61629
Telephone:	309-675-1589
E-Mail:	pavelka_tirena_l@cat.com

Arkansas Contact

Company Name:	J.A. Riggs Tractor Co.
Contact Person	Jeff Hockett
Address:	9125 Interstate 30
Telephone:	(501) 570-3171
E-Mail:	HockettJ@ariqgs.com

Participating Entity

Name:	John Leverett
Address:	State of Arkansas, TSS-Office of State Procurement, 1509 W. 7 th Suite 300, Little Rock, AR 72201
Telephone:	501-683-2222
E-Mail:	john.leverett@dfa.arkansas.gov

The contacts listed above can be changed by the parties from time to time in writing. Such updates do not require an amendment to this Addendum.

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This Participating Addendum and Master Agreement 032119-CAT administered by Sourcewell, together with its exhibits (including any terms referenced in the Master Agreement), 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 or the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the Master 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 Participating Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State: Arkansas	Contractor: <i>J. A. Riggs Tractor Co</i>
By: 	By: 
Name: Camber Thompson	Name: <i>Jeff Holdert</i>
Title: Sr. Procurement Manager - Department of Transformation and Shared Services, Office of State Procurement	Title: <i>Sales Manager</i>
Date: <i>8/18/2020</i>	Date: <i>8/18/20</i>